

ICTSD Project on Fisheries, Trade and Sustainable Development



# Fisheries Access Agreements: Trade and Development Issues



By **Stephen Mbithi Mwikya**  
Kenya Fish Processors and Exporters Association



International Centre for Trade  
and Sustainable Development

Issue Paper No. 2

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## ACRONYMS

<b>DMD:</b>	Doha Ministerial Declaration
<b>DWF:</b>	Distant Water Fishing
<b>DWFN:</b>	Distant Water Fishing Nation
<b>EEZ:</b>	Exclusive Economic Zone
<b>EPA:</b>	Economic Partnership Agreement
<b>FFA:</b>	Forum Fisheries Agency
<b>FPA:</b>	Fisheries Partnership Agreement
<b>GRT:</b>	Gross Registered Tonnage
<b>ICCAT:</b>	International Convention for the Conservation of Atlantic Tunas
<b>IOTC:</b>	Indian Ocean Tuna Commission
<b>IUU:</b>	Illegal, unregulated and unreported
<b>MCS:</b>	Monitoring, Control and Surveillance
<b>MDG:</b>	Millennium Development Goals
<b>MSY:</b>	Maximum Sustainable Yield
<b>MT:</b>	Metric tonnes
<b>OCTs:</b>	Overseas Countries and Territories
<b>PIC:</b>	Pacific Island Countries
<b>RFOs:</b>	Regional Fisheries management Organisations and arrangements
<b>RRT:</b>	Resource Rent Tax
<b>SCM:</b>	Subsidies and Countervailing Measures
<b>SIC:</b>	Small Island Countries
<b>SIDS:</b>	Small Island Developing State
<b>SPS:</b>	Sanitary and Phytosanitary
<b>SWIO:</b>	South Western Indian Ocean
<b>TAC:</b>	Total Allowable Catch
<b>UNCLOS:</b>	UN Convention on the Law of the Sea
<b>VMS:</b>	Vessel Monitoring System
<b>WCPO:</b>	Western and Central Pacific Ocean
<b>WTO:</b>	World Trade Organization



## FOREWORD

Fish and fish products provide important trade and livelihoods opportunities in many coastal developing countries. Nearly 40 percent of fish output is traded internationally with an export value of US\$ 58.2 billion, making seafood one of the most extensively traded commodities in the world. Exports of fish products in developing countries today comprise 20 percent of agricultural and food-processing exports - more than tropical beverages, nuts, spices, cotton, sugar and confectionary combined. These opportunities are likely to increase as demand for fish products continues to soar. In addition to providing a significant source of export revenue for developing countries, the fishing sector also constitutes a vital component of domestic food intake and an important provider of local livelihoods.

However, market access barriers and fisheries subsidies continue to pose serious obstacles for developing countries to expand their participation in international trade, add value to their exports and ensure rural development. These barriers include stringent standards, anti-dumping measures and traceability requirements in export markets. In addition, fisheries subsidies in industrialised countries have contributed to market distortions, reducing developing countries' ability to compete with subsidised fleets and often making it economically unviable for poor countries to build up their own fishing industries. These impacts are particularly acute where distant water fishing fleets enter national waters under bilateral access agreements, out-competing national fishers and exploiting the coastal states' resources often in the absence of adequate management and enforcement procedures.

Meanwhile, fish stocks around the world are disappearing at an alarming rate. The UN Food and Agriculture Organization estimates that as much as 75 percent of global marine fish stocks are now fully exploited, over-exploited or depleted, confirming a consistent decrease since 1974 in marine fish stocks with potential for further exploitation. Inappropriately designed subsidies to fishing industries have been widely recognised as one of the key economic drivers of overexploitation of fisheries resources by contributing to significant overcapacities of fishing fleets, particularly in developed countries. Large-scale industrial fleets have also contributed to secondary pressures on marine resources, such as increased levels of bycatch - that is, species that are caught unintentionally by fishing gear - and the use of destructive fishing practices which harm non-target species and marine ecosystems.

Some of these pressures are further exacerbated through fisheries access agreements - commonly entered into by a distant water fishing (DWF) nation on behalf of its fishing fleet (or by the fleet itself) and a 'host' country - that do not take sufficient account of sustainability considerations or provide adequate returns for the host countries. In some regions, such as West Africa and the South Pacific, fishing by DWF fleets under access agreements makes up the vast majority of fishing in their Exclusive Economic Zones. Concerns have been raised that these agreements are frequently not based on a comprehensive fisheries management plan, and that the amount of access fees often does not reflect the value of the catch nor does the revenue contribute to developing the local fishing sector.

In recognition of some of these concerns, governments at the 2001 Ministerial Conference of the World Trade Organization (WTO) in Doha agreed to "clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries". Among WTO Members, the "Friends of Fish" group - including, among others, Australia, Chile, New Zealand, the Philippines, Peru and the US - have been at the forefront of pushing for the launch of negotiations. After several years of discussions and initial strong resistance from Japan and Korea, broad agreement has now emerged on the need to prohibit certain subsidies that contribute to



overcapacity and overfishing, as noted in the Ministerial Declaration adopted at the WTO Ministerial Conference in Hong Kong (December 2005).

In the Ministerial Declaration, governments also explicitly recognised the importance of the sector for addressing development priorities, poverty reduction, and livelihood and food security concerns. This explicit recognition provides an important window of opportunity to integrate public policy considerations in the negotiations and the disciplines. How to address access fees has emerged as one of the key development issues in the talks. Given that 70 to 80 percent of EU and US fisheries access fees are paid by governments rather than the fleets, it has been argued that these payments have contributed to overcapacities of DWF fleets by making it more economically viable for them to fish in distant waters. At the same time, the economic importance of access fees to some developing countries has been widely recognised, which needs to be taken into account if access fees are to be disciplined.

To address these development priorities while balancing them with sustainability objectives, policies and positions will need to listen to and reflect the voices of those whose livelihoods will ultimately be affected by the subsidies disciplines - including fisherfolk, fishing communities and related industries - but who continue to remain on the sidelines of the debate. Moreover, there is need for analysing domestic realities and priorities in developing countries' fisheries in order to inform and shape negotiating positions and domestic flanking policies.

This issue paper - published in the context of the ICTSD project on *Fisheries, International Trade and Sustainable Development* - aims to contribute to this debate in an effort to develop trade-related fisheries policies and rules that are supportive of both resource management and livelihoods objectives. To this end, Stephen Mbithi Mwikya - a fisheries expert from the Kenya Fish Processors and Exporters Association - provides an overview of different types of fisheries access agreements and assesses their socio-economic and sustainability impacts, including on employment, value-addition, competitiveness and stock levels. He examines a range of policy options for addressing access fees in the fisheries subsidies negotiations, negotiating fisheries access agreements, and setting up domestic policies to enable developing countries to exploit their own fisheries resources.

We hope that you will find this paper to be stimulating and useful for your work.



Ricardo Meléndez-Ortiz  
Executive Director, ICTSD

## EXECUTIVE SUMMARY

The historic coming into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994 gave coastal and island states control over up to 200 nautical miles radius of their coastal waters as their Exclusive Economic Zone (EEZ). This control involves rights and obligations: rights to natural resources in these waters and obligations to sustainably manage the aquatic ecosystems they contain. The enactment of UNCLOS stimulated trade between coastal and island countries with excess fish stocks in their EEZs and distant water fishing nations (DWFN) with capacity to fish in the high seas.

Fishing access trade involves the sale of either a defined amount of catch of a particular species, or access - i.e. permission to use a defined fishing effort in an EEZ for a particular period. The access payment is usually financial, but some agreements involve barter trade, whereby access to a particular species is exchanged for reciprocal access to another species. Fishing agreements are predominantly between developing coastal and island states (often with little or no capacity to fish in their EEZs) and a developed DWFN. The fisheries agreements signed with the major DWFN regions seeking them (namely the EU, the US and the Far East) have quite distinct characteristics.

The EU agreements are usually bilateral in nature, between the host country and the EU. They involve financial compensation for the fishing of a defined quantity of a specified fishery species. The negotiations process for EU fishing agreements is usually open in that the agreement is published, even though the negotiation process is not widely consultative, even in the EU. One of the drawbacks of the EU agreements stems from the fact that the EU insists on bilateral agreements, even when the target stocks are straddling and migratory, and would be better managed under multilateral agreements. Given the established negotiating machinery of the EU and the lack of sufficient information in host countries, the DWFN tends to strongly influence the terms of the agreement.

The US has negotiated the only multilateral fisheries access agreement, with the 17 Pacific Island Countries (PIC). Since the target species in this agreement (tuna) is straddling and migratory between the various small island countries in this region, a multilateral approach enables close co-ordination of fishing activities, with the surveillance measures paid from the access fees. The main weakness of this agreement is that it stipulates a lump-sum payment for a defined fishing period, with no limit on amounts of catch during the license period. This type of arrangement therefore risks over-exploitation of fish stocks. As with the EU agreements, the US multilateral agreement is negotiated between governments and is published.

The Japanese and other Far East DWF fleets usually fish under private access agreements negotiated between their private sector associations and the host governments. Even though the government of the DWFN can attend these negotiations as an observer, the actual payment for the access fees is carried out by private sector associations. These payments are based on the amount of catch reported at agreed landing ports in the region. These bilateral agreements are not published and, hence, are considered 'closed agreements'.

Fisheries access payments are not based on well-defined resource rent principles. Despite the relatively low investment costs required for EEZ fishing, most fisheries access agreements involve financial compensation of between only two and seventeen percent of the value of the catch, with an average of six percent. These access fees, although low, are important to the development of small island developing states, where they contribute up to 50 percent of Gross Domestic Product (GDP). The revenue generated from value-added activities, such as employment, shipbuilding and support services, is higher in magnitude than the direct financial benefits. Approximately 10 percent

of the employment and value-added resulting from fisheries access agreements goes to the host developing countries, with the remainder flowing to the DWFN.

This imbalance in trade is behind the recent trend, whereby coastal and island countries have opted to discontinue fisheries access agreements, as soon as their capacities to fish their own EEZs are sufficiently strong. This has been the case in, for example, New Zealand and South Africa.

Fisheries access agreements also tend to be associated with the provision of various forms of subsidies. These include subsidies related to shipbuilding, fishing investments, access fee payments, joint ventures and value-added activities, such as processing. These subsidies accelerate stock depletion by increasing fishing effort, distort trade between the various DWFNs, and impede efforts by developing coastal and island states to participate in fishing in their EEZs. The high levels of subsidies and their negative impacts resulted in calls by various countries for fisheries subsidies to be disciplined in the World Trade Organization (WTO). At the Doha Ministerial Conference in 2001, WTO Members agreed to negotiations aimed at clarifying and improving WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. These negotiations represent an important step forward in the debate.

It is imperative that the circumstances of developing countries are taken into account in the process of negotiating new disciplines on fisheries subsidies, since access payments generate significant revenue for many developing coastal and island countries. These payments may be considered a subsidy to the DWF fleet from the government of the DWFN. However, to the host nations, these payments represent trade in a good (access to fish) - not a subsidy. Even though there is general agreement that all capacity-enhancing subsidies, such as those for shipbuilding, need to be abolished, their trade-distorting effects will continue to be felt for a long time, as the economic life of many DWF vessels is about 30 years. There is therefore a need to agree on ways to mitigate their impacts, especially in the EEZs of developing countries. Such measures could include an immediate end to capacity-enhancing subsidies in the DWFN, and a phased withdrawal of these subsidies in developing countries over an agreed period of time, to allow development of the local EEZ fishing capacities.

The nature of fisheries access agreements is constantly evolving. Emphasis is now being placed on stock conservation measures and ensuring increased benefits to host states. Both the DWFNs and host states have various policy options in their quest to ensure sustainable trade in fisheries access. The critical question that begs an urgent answer is: *how best can developing countries benefit from their fisheries resources and develop their own fisheries capacities, given the current policy environment that includes fisheries subsidies and fisheries access agreements?* In today's globalised world, some argue that it does not matter who does the fishing, so long as the host country maximises rent capture; others argue that fishing is much more than trade, with socio-economic and other benefits that are best realised if fishing in the EEZs is domestic.

Ideally, fisheries access agreements could be a major form of mutually beneficial trade between countries. Nevertheless, it is clear that fisheries access agreements are in urgent need of reform if they are to contribute to poverty alleviation, as set out in the United Nations Millennium Development Goals (MDGs), and to contribute to sustainable fisheries management, as set out in several multilateral fisheries conservation and management agreements.

## 1 INTRODUCTION

Fisheries access agreements between countries are becoming an increasingly important means of supplying fish to markets, particularly in the EU, Japan and the US. These agreements can be considered a form of international trade and are particularly important in countries where the fisheries sector makes a significant contribution to the economy.

Although there are fisheries access agreements between the EU and northern European countries, such as Norway, the vast majority of these agreements, both in terms of numbers and volumes of trade, are between developed and developing countries. Fisheries access agreements are considered to be an essential component of the North-South relationship. Typically, it is developing countries which are granting access to developed countries, often because they lack the capacity to fish in their Exclusive Economic Zones (EEZs). While the mechanism for two countries to enter into fishing agreements has been in existence for some time now, fishing in the EEZs of many developing countries has not always taken place under formal agreements. It is estimated that there is significant illegal, unregulated and unreported (IUU) fishing taking place in the waters of many countries, especially in developing countries, which lack the capacity to implement monitoring, control and surveillance (MCS) measures. To a certain extent, this situation results from the fact that some IUU fishers may have been in these waters before the delineation of the EEZs and have continued their operations illegally.

The willingness of a developing country with a particular fishery potential to grant access to a distant water fishing nation (DWFN) may influence the level of financial aid granted by the DWFN for other sectors. This can be an important factor for aid-dependent developing countries when deciding whether to enter into fishing access agreements. To the developing countries, fish stocks in their waters are natural resources, for which they are entitled to charge resource rent. Considering that current levels

of financial compensation in fisheries access agreements rarely exceed 10 percent of the value of the catch (FIAS, 2000), this form of trade represents an alternative of last resort for developing countries. This is illustrated by the current trend whereby most developing countries are opting out of these agreements as they become more able to exploit their own fisheries resources. Given the fact that many developing countries still lack this capacity, there is an urgent need to reform fisheries access agreements to enable host developing countries to capture adequate levels of rent on their fisheries resources.

Fisheries access agreements are generally regarded as trade between two countries, with one having a good (access to fish), which it is willing to trade with another. However, they are based on international agreements that specify the rights and obligations of both trading partners, including measures to ensure the sustainability of stocks and preservation of marine biodiversity. While these sustainability measures are written into most fisheries access agreements, their enforcement has been lacking. The net result has been that several stocks targeted by DWFNs are in serious decline, with several species being fished beyond their Maximum Sustainable Yields (MSY). This raises significant concerns about the sustainability of this trade and its ability to contribute to the Millennium Development Goals of poverty alleviation in developing countries.

Other unfortunate characteristics of fishing by DWFNs in the EEZs of developing countries stem from the subsidies provided by the DWFNs. Most DWF fleets fish with heavily subsidised vessels, have part of the access fees paid for by their governments and have their operational costs subsidised by their home countries. This leads to trade distortions that make it difficult for a developing country which grants access to develop its domestic EEZ fleet, since they lack the capacity to offer fishing subsidies at similar magnitudes. The quest by these developing countries to enhance their EEZ fishery trade is

further complicated by the fact that the main markets for the target fish species are in the DWFNs, where a myriad of market access issues (i.e. barriers in the form of tariff and sanitary and phytosanitary (SPS) measures) impede trade.

The current scenario of fishing under access agreements raises several pertinent questions: What is happening out there in the waters? Is it possible that under the cover of distance, some DWF fleets are unsustainably, even illegally, exploiting fisheries resources? Could it be that some developing countries are exacerbating the situation by encouraging non-transparent negotiating processes and that the DWFNs are exploiting the weak bargaining power of countries granting access to achieve unjustifiably low access fee payments? Is the future of EEZ stocks and biodiversity in serious danger of collapse? These and other questions require a substantial amount of research to answer accurately. While there is a general lack of knowledge on the status of stocks under access agreements, there is nonetheless sufficient information to help draw some preliminary conclusions.

This study was commissioned to untangle some of the issues surrounding fisheries access agreements, especially those relating to trade and sustainable development. Specifically, the study seeks to:

- Examine the genesis and evolution of fisheries access agreements and how they are currently affecting world fish trade.
- Provide an overview of the various types of fisheries agreements in various parts of the world.
- Review negotiating procedures and capacities of partners during fisheries access agreements negotiations.
- Provide an overview of both direct and indirect benefits derived from fisheries agreements by both parties and their socio-economic implications.
- Provide insights into the trade impacts of DWFN subsidies and their effect on host countries fisheries development, including the socio-economic and fish stock sustainability implications.

- Examine stock sustainability and biodiversity issues in fisheries access agreements, especially with respect to the role of international treaties.
- Review bilateral and multilateral policy options for developing countries wishing to grant fisheries access, while taking into account their WTO compatibility.

The basic assumptions that formed the starting point for the study are that:

- There are currently many inequalities in the negotiating process and terms of fisheries access agreements, in favour of the DWFNs; in particular, developing coastal and island countries capture only a fraction of the potential resource rent from their fisheries resources, under the current agreements.
- Nonetheless, these agreements contribute an important share to the GDP of many developing countries and can, if designed and implemented in a fair and responsible manner, deliver mutual benefits to both the host country and the DWFN.
- Fisheries access agreements therefore need to be revised, to take into account developing countries' needs and stock sustainability issues.
- The long-term objective should be to enable developing coastal and island countries to build up their capacities to fish their own EEZs, as the potential economic and socio-economic benefits of fishing are best captured by the developing country if fishing is done by its domestic fleet.
- This objective needs to be accompanied by careful attention to monitoring, control and surveillance (MCS) and regional co-ordination, to avoid over-fishing and stock depletion.

The study has been carried out based on discussions with industry (both DWFNs and developing coastal and island countries) and government agencies responsible for fisheries, discussions in regional and international fisheries seminars and a review of existing literature on the subject.



## 2 GENESIS OF FISHERIES ACCESS AGREEMENTS

In simplest terms, the world of fishing was divided into two up until the 20<sup>th</sup> century: countries whose fishing activities were limited to inland waters and immediate coastal regions (one to two miles offshore) and countries with fishing fleets in distant waters. These two categories were later loosely referred to as coastal states and DWFNs. Basically, the DWF vessels roamed the seas in search of fish up to the shores of many coastal states. Territorial claims by coastal states were limited to 'one cannon shot', or about a distance of two nautical miles. The evolution of the concept of Exclusive Economic Zones and the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994 changed this situation. UNCLOS gave coastal states jurisdiction (with rights and obligations) over a 200-nautical-mile Exclusive Economic Zone in the seas adjacent to their coasts.

The need for coastal states to control ocean stretches adjacent to them was necessitated by three factors:

- The desire for states to secure these coastal regions for security reasons, especially during war;
- The need for guaranteed safe 'innocent passage' of international traffic both in the sea and air above the oceans; and
- The emerging conflict over-exploitation of marine resources, including fish, marine life and minerals.

In 1945, President Truman, responding in part to pressure from domestic oil interests, unilaterally extended the jurisdiction of the United States over all natural resources on its continental shelf, including oil, gas and minerals. This was the first major challenge to the freedom-of-the-seas doctrine, with other nations soon following suit. Iceland's extension of its jurisdiction in the 1950s sparked the famous 'cod wars' with the DWFN, the UK. These unilateral decisions were followed by the first United Nations Conference on the Law of the Sea in 1958, which accepted a definition

adopted by the International Law Commission (ILC). The ILC defined the continental shelf to include "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, or, beyond that limit, to where the depth of the super adjacent waters admits the exploitation of the natural resources of the said areas". In the same year, the United Nations held the first 'Convention on Fishing and Conservation of the Living Resources of the Sea'.

During this time, several other conferences were held on the issue of security and resources of the seas, the most notable being the 1967 UN General Assembly, during which there was a clear call from Malta's Ambassador to the UN for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction as the only alternative by which to avoid the escalating tension that would be inevitable if the current situation was allowed to continue". (UN, 1967). This meeting called for an initiative to define national sea limits.

The Third United Nations Conference on the Law of the Sea, charged with the responsibility to write a comprehensive treaty for the oceans, was convened in 1973. It ended nine years later with the adoption in December 1982 of a constitution for the seas - the United Nations Convention on the Law of the Sea (UNCLOS). This Convention has been described as "possibly the most significant legal instrument of the 20th century" (UN, 1982). The Convention was adopted as a 'package deal', to be accepted as a whole without reservation on any aspect. As signatories to the Convention, governments commit not to take any action that might defeat its objects and purposes. Ratification of, or accession to, the Convention expresses the consent of a state to be bound by its provisions. The Convention came into force on 16 November 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession.

The following are some of the Convention's key features particularly related to fishing:

- Coastal states exercise sovereignty over their territorial sea which they have the right to establish up to a limit of 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; states bordering the straits can regulate navigational and other aspects of passage;
- Coastal states have sovereign rights in a 200-nautical-mile EEZ with respect to natural resources and certain economic activities and exercise jurisdiction over marine science research and environmental protection;
- All states enjoy the traditional freedoms of navigation, over-flight, scientific research and fishing on the high seas; they are obliged to adopt, or co-operate with other states in adopting measures to manage and conserve living resources;
- States bordering enclosed or semi-enclosed seas are expected to co-operate in managing living resources, environmental and research policies and activities; the mechanisms of co-operation were defined as Regional Fisheries management Organisations and arrangements (RFOs);
- State Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

Today, the benefits brought by the establishment of EEZs are clearly evident. Already 86 coastal states have economic jurisdiction up to the 200-mile limit. As a result, almost 99 percent of the world's fisheries now fall under some nation's jurisdiction. A large percentage of world oil and

gas production is also located within offshore regions of coastal countries' EEZs (UN, 2002) and many other marine resources fall within coastal-state control. This provides a long-needed opportunity for rational, well-managed exploitation under an assured authority. As such, UNCLOS handed an economic lifeline to several island states, which have almost no significant natural resources other than fish, and averted the risk of coastal zones being fished-out by an uncontrollable DWF.

UNCLOS should be seen as an instrument which established rights and obligations, giving coastal states 200-nautical-miles jurisdiction on one hand, but requiring them to protect and preserve the marine environment and biodiversity on the other hand. It further urged all states to co-operate on a global and regional basis in formulating rules and standards.

With the passage of time, United Nations' involvement in the law of the sea has expanded as awareness has increased that ocean problems, and global problems as a whole, are interrelated. Already, the 1992 United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, placed a great deal of emphasis on the protection and preservation of the ocean environments, in harmony with the rational use and development of their living resources. The concept of 'sustainable development' was established at UNCED and embodied in Agenda 21, the programme of action adopted at the Conference. In implementing Agenda 21, one of the recurrent topics has been the need to combat the depletion of fish stocks and the root causes of this depletion, including over-fishing, excess fishing capacity, by-catch and discards.

One of the most important outputs of UNCED was the convening of an intergovernmental conference under United Nations auspices with a view to resolving the old conflict between coastal states and distant water fishing states, over straddling and highly migratory fish stocks in the areas adjacent to the 200 nautical-mile EEZs. The UN General Assembly adopted the 1995 Agreement on Straddling Fish Stocks and

Highly Migratory Fish Species. This agreement introduced a number of innovative measures, particularly in the area of environmental and resource protection. Under the agreement,

states are obliged to adopt a precautionary approach to fisheries exploitation and port states are given extended powers to enforce proper management of fisheries resources.

## 2.1 The Aftermath of UNCLOS – Fisheries Access Agreements

The coming into force of UNCLOS meant that, overnight, all unauthorised vessels fishing in other countries' EEZs were doing so illegally. However, as most of the coastal states concerned lacked capacity to monitor their seas, many of the DWF vessels continued their illegal operations. The problem of IUU fishing continues to be rampant today.

Several of the DWFNs (especially Japan, the EU and the US) sought to sign fisheries agreements with coastal and island countries where their fleets had already been operating, or in waters considered to have high potential for capture of target fish species. These were largely 'cash-for-access agreements', although reciprocal

fisheries access agreements were concluded in some regions.

Distant water fishing has not been created by countries signing agreements with others - it actually existed before these agreements. Nonetheless, the fact that DWFNs now had to pay to operate in fishing grounds they considered traditional to their operations led to serious re-evaluation of the potential of various fishing grounds. DWFNs have tended to sign agreements with coastal countries only for waters considered rich in target fishery species. Some major fishing nations such as Japan, which have had to reduce their fishing fleets in most waters, are now seeking access only in specific waters.

## 2.2 Overview of the EU Fisheries Agreements

The European Union actively seeks to sign fisheries access agreements with other countries (see Annex 2). This is driven, in part, by the need to ensure continuity of fishing activities by EU vessels that were already in these distant waters at the time of enactment of UNCLOS. It is also a result of the desire to export overcapacity from EU waters to other regions with surplus stocks, especially after collapse of some fisheries in northern European waters. Fishing agreements therefore form an important means by which EU markets and processing plants are supplied with fish. There are three main types of EU fisheries agreements, as outlined below.

### *Agreements with Financial Compensation*

These agreements are between the EU and coastal countries wishing to grant fishing access to EU vessels without receiving reciprocal access rights. They involve payment of financial compensation by the EU and fees from private owners. The payment is based on the number and type of vessels, or a certain volume in terms of Gross Registered Tonnage (GRT), for a specified

period of time. This type of agreement includes all those concluded with African, Caribbean and Pacific countries and the agreement signed with Greenland. These agreements cover mainly tuna (Indian Ocean, Atlantic and Pacific Oceans), hake (Namibia), shrimps (Mozambique) and octopus (Mauritania). Even though financial compensation varies greatly between the different countries and species, it amounts to only about 2 to 17 percent of the market value of the catch (IFREMER, 1999). Given the lack of clear policy guidelines on these agreements, the large variation in the financial compensation agreed for similar species is more a factor of the different negotiating powers of the host countries than the value of catch. Considering the EU's strong negotiating machinery, individual ACP countries usually find it difficult to successfully negotiate fair compensation.

### *Reciprocal Agreements*

In these agreements, fishing opportunities in one country are exchanged for reciprocal access to stocks in EU waters. This exchange trade is a form of 'barter' and is based on the



principle of 'cod' equivalent, i.e. X amount of fish represents Y amount of cod. Norway, Iceland and the Faeroe Islands have concluded agreements of this type with the EU. The EU also had agreements with the Baltic States (prior to their joining the EU in 2004) which combined financial compensation and the exchange of fishing rights. A main drawback of this form of agreement has been that it is not flexible enough to take into account variations in market prices for cod, which can be quite considerable.

### *Second Generation Agreements*

This form of agreement is based on incentives for setting up joint ventures, which allow quota access to EU vessels in the EEZ of another country. Argentina is the only country to have signed such an agreement with the EU. This agreement led to decommissioning and re-flagging of several former EU vessels into Argentinean flags, the so called 'Argentinisation'. The weaknesses of this agreement stemmed from the facts that it was heavily subsidised in favour of EU DWF fleets, and that it caused serious overcapacity issues, which led to the near collapse of hake fisheries in Argentina. Because of these problems, the agreement has therefore been discontinued.

The EU Council issues instructions prior to negotiations which, even though they may involve the private sector, are conducted by the European Commission (mainly via the Directorate-General (DG) for Fisheries) up to the drafting of the protocol. The EU Council takes the final decision and presents the agreement to the EU Parliament once it has been concluded. While the EU grants the host country rights over the use of the finances ensuing from the agreement, the Commission is involved throughout the implementation and disbursement process, especially for those aspects requiring consultation between both parties.

The EU has initiated a reform process through which it will phase out fisheries access agreements and replace them with Fisheries Partnership Agreements (FPAs), as components of the broader Economic Partnership Agreements

(EPAs) currently under negotiation with ACP states. None of these new generation 'EPA-compliant' agreements has been signed to-date (since the EPAs are still being negotiated).<sup>1</sup> However, the intent is to:<sup>2</sup>

- Maintain European presence in distant fisheries and protect European fisheries sector interests. This seems to be necessitated mainly by the increasing competition between DWF fleets from the Far East, the US and the EU in most major fishing grounds.
- Ensure that fisheries agreements contribute towards sustainable exploitation of fisheries resources. This involves, for example, partnering with host countries to undertake stock assessments and improve MCS measures. A major concern in many developing coastal countries is that the EU will seek to oblige host countries to exclude non-EU fleets from EEZs of interest, by insisting on a fixed total off-take, which may be very close to the negotiated EU off-take.

The new FPAs risk being merely paper commitments, not translated into firm commitments on the part of the EU to contribute to sustainable fisheries management. At an EPA discussion meeting between the EU and East and Southern African countries in Nairobi in June 2005, DG Fisheries insisted on concluding bilateral tuna agreements with the countries in the South West Indian Ocean, rather than multilateral (regional) agreements. Given the near impossibility of conserving migratory stocks in a bilateral agreement, this stand was in contrast to commitments by the Commission to reform fisheries access agreements. The stated concern of DG Fisheries is the difficulty of successfully implementing a multilateral fisheries agreement on straddling stocks, especially in the Indian and Pacific Oceans. This concern, however, does not appear to be shared by DG Trade or DG Development. The ACP region is still waiting for a formal clarification from the EU on its stance on the level of multilateralism to be included in the proposed Fisheries Partnership Agreements.

## 2.3 Overview of the US Fisheries Agreements

While the EU seeks to enter into bilateral agreements with host countries, the US mainly pursues a multilateral approach, by concluding fisheries agreements with groups of countries whose EEZs have a high potential to include target species. The US is particularly keen to maintain fishing activities in waters in which it operated prior to UNCLOS, such as in the Pacific region.

So far, the US has signed only one such agreement; the tuna agreement with the Pacific Island Countries (PIC). This is the only multilateral agreement in the Western and Central Pacific Ocean (WCPO). The agreement was negotiated in 1987 between the US and 17 states in the WCPO (including Australia and New Zealand). It involves payment of a lump-sum fee for access of US fleets to the EEZs of these states. In 2003, the fee was US\$21 million (having gradually increased from US\$12 million). At the same time, however, the US fleet in PIC waters has decreased from 49 purse seiners in 1994 to only 16 today (FIAS, 2000).<sup>3</sup>

Of the total fee paid by the US, US\$18 million is disbursed directly from the State Department and US\$3 million comes from the American Tuna Association. In sharing this payment, the PIC distributes 15 percent of the total fees equally among all 17 states, and divides the remaining 85 percent among those countries where actual fishing takes place, based on monitored US catch reports (FIAS, 2000). The advantage of this system is that since the fees paid are constant, there is less incentive for the US fleet to cheat with regard to catch volumes or actual geographical locations of catch. From a stock sustainability

point of view, the main drawback of lump-sum payments is that since they are not based on off-take, operators may seek to maximise off-take during the license period. This is a real threat, given the opportunities to use illegal gears in the vast EEZ fishing grounds, since monitoring cannot cover all vessels at all times. The US fleet is much less competitive than the other DWFNs in the PIC region, particularly the Far-East fleet, mainly because of their higher labour and insurance costs. This competition could partly explain the observed fleet reductions by the US. As a result of this reduced fleet, and as the region is allowing increased access to other DWFNs, the American Tuna Association has been requesting a downward revision of their part of the financial compensation.

American vessels fish in several other distant waters, mainly through their companies seeking foreign licenses or through private agreements with fishing authorities. An example of this arrangement is the sea bob fishery in the Caribbean Ocean, especially in waters around Guyana. Generally, DWFNs have been seeking access agreements for their fleets in countries where they have operated before the implementation of EEZs. These fishing grounds are often geographically near the DWFNs, or their Overseas Countries and Territories (OCTs). This explains, to a great extent, the multilateral agreement between the USA and PIC, and the heavy presence of EU fleet in the Indian Ocean and West African coasts. Ultimately, as demand for fish increases and supply diminishes, DWFNs will venture into non-traditional grounds, as the EU agreement with Kiribati and Tuvalu illustrates.

## 2.4 Overview of Japanese Fisheries Agreements

Prior to the establishment of EEZs, Japan had several ocean-going sea vessels that also acted as processing plants, the so-called 'floating factories'. A number of these ships have since been decommissioned. The vast majority of Japanese fishing vessels target tuna and are comprised of long liners and pole and lines. Japan still has a significant number of purse

seiners, especially for seining skipjack tuna for processing (canning and preparation of *Katsuobushi*, a smoked and dried skipjack product). The long liners and pole and line vessels selectively harvest fish such as Yellowfin tuna, Bigeye tuna, Bluefin tuna and swordfish, which are prized in Japan especially for the *sashimi* market.

The traditional fishing grounds of Japanese vessels include the West and Central Pacific, Indian and Atlantic Oceans. Unlike the EU and US agreements, Japan's fisheries agreements do not directly involve the Japanese government. All arrangements permitting access to Japanese vessels in the EEZs of other countries are either:

- agreements between the Japanese Tuna Association and coastal countries; or
- license fee arrangements between a specific Japanese company and fisheries authorities of a coastal country.

Negotiations for these fisheries agreements are held between the coastal or island country and the Japanese Tuna Association, with the Japanese Fisheries Commission represented as an observer. The financial compensation agreed is considered a private agreement between both parties. Since the agreements are not published

(unlike the EU and US agreements), they are often referred to as closed agreements. The fees are paid by the Japanese Tuna Association and take the following form:

- Vessels pay a 10,000 Japanese Yen registration fee to enter a country's EEZ;
- Each vessel pays about 5 percent of the value of the catch on a per-trip system. The price is determined as the landing price in Japan, according to published market data and compared with historical catch information.

While this system, in theory, reflects the market price of the catch, it relies on accurate reporting of the geographical origin of the cargo of the ships, which may not always be accurate. In addition, since it is not based on a predetermined figure, the recipient country would find it difficult to budget on this revenue.

## 2.5 Agreements with other DWFNs

Countries such as South Korea, China, Chinese Taipei and Norway are involved in fisheries access in several oceans, especially the Pacific, Indian and Atlantic Oceans for tuna. Most of this access is based on the payment of license fees by individual vessels to coastal countries, rather than a broad country-to-country agreement.

Where some form of agreement does exist, it is negotiated by the DWFNs' tuna associations, with participation of the fisheries authorities of the two countries involved. Payments are based on about 6 percent of the value of the catch, as determined at major fish landing ports, such as Bangkok.

## 2.6 Fishing under Licenses Only

A large number of coastal and island countries, particularly in Western and Eastern Africa, do not have formal access agreements with the DWF fleets operating in their waters. This arrangement only makes sense for countries whose domestic fleets are effectively exploiting their fisheries resources. In reality, many of the countries that have not entered into access agreements have very low numbers of domestic fleets in their EEZ and high numbers of DWF fleets. Because of this,

they capture much less resource rent, compared with neighbouring countries which have entered into access agreements. Since most access agreements include development components to assist the host country with the development of infrastructure (e.g. fish ports), management and research, it makes economic sense to enter into these agreements, especially in situations where target stocks are straddling and highly migratory.

### 3 NEGOTIATING CAPACITIES OF COASTAL STATES

A balanced negotiation of fisheries access agreements presupposes an ideal market situation, where there are many buyers (DWFNs) and sellers (host states), with equal access to information and alternatives. Given

that fisheries access agreements are now basically between developing and developed countries, there are inherent imbalances in the negotiating process. These are described below.

#### 3.1 Access to Information

In entering negotiations, developing coastal or island states often have no stock assessment of their EEZs and therefore no clear knowledge of the status of the target fishery species. Regional Fisheries management Organisations and arrangements (RFOs) may in some areas have very useful data on the general status of stocks in the surrounding ocean (EEZs and open seas), but what a developing country really needs at the negotiating table is specific data on stocks in its EEZ. The DWFN, on the other end, may have been fishing in the waters of the host country for some time prior to the negotiations, especially before the EEZ concept was established. Therefore, the DWFN will have 'historical data' on the potential catch of the country, which it usually does not reveal and has not published. The coastal country would then have to invest in expensive market intelligence research to be able to have a rough idea of what the negotiating partner is capable of catching in its EEZ. Furthermore, host nations rarely know the full economic benefits that the DWFNs derive from the catch in their EEZs,

and this seriously weakens their bargaining power. In the case of many of these fisheries, such as tuna, the DWF fleet usually insists that obligatory landings on the coastal country ports are not practical, or cost effective, particularly given that the necessary facilities for docking and transshipment are often unavailable.

The issue of catch data is complicated by the fact that coastal countries lack the capacity to undertake surveillance of their EEZs by sea or air and most do not have vessel monitoring systems. As a result, several IUU vessels of the same or different DWF fleet often participate in the fishery with the legitimately licensed vessels. This increases fishing effort beyond licensed capacities and may jeopardise stock recruitment. Lack of surveillance also means that a DWF vessel targeting a migratory species may choose to report the catch as having been made either in international waters, or in the EEZ of an adjacent country. Therefore, the coastal country is dependent, to a great extent, on what the DWFN reports, without any means of verification.

#### 3.2 Open versus Closed Negotiations

A negotiation for fishing access is termed 'closed' when the public is not informed of the negotiation process, there is no real consultation prior to the negotiation, and the details of the ensuing agreement are not published. Negotiators are supposed to be realistic, recognising, on the one hand, that the fishery in question is a natural resource of the host country and needs to be purchased at a fair price. On the other hand, the host government needs to realise that the companies seeking fishing access are in a business and will only agree to terms that allow them to operate at a profit. Basically, what both parties need to agree on is the proportion of resource rent that should be retained by the host country.

'Open' negotiations, such as those conducted for the multilateral agreement between the US and the Pacific Island Countries (PIC) or the EU agreements, encourage more ownership of the decisions reached. They have several advantages over 'closed' negotiations. As the negotiating process is relatively transparent, the two parties are less likely to make unreasonable demands, since they will be subjected to wider scrutiny by the many stakeholder representatives involved. There is therefore less likelihood of arm-twisting tactics during the negotiations. In addition, since the outcome of the negotiations is published and financial payments are defined, open

negotiations are less prone to corruption. In this regard, government-to-government agreements have a lower corruption risk than government-to-private sector agreements, especially if the latter are not published. Payment of license fees by foreign private sector companies should not normally be prone to corruption, since the fees levels are usually defined in government gazettes or national fisheries legislation. Other players who may seek to access the same resources are able to assess spare stock capacity after taking into account the amount covered by existing agreements. And finally, the government agencies responsible for managing the agreement, and other stakeholders, are better able to monitor compliance with the agreed conditions.

There is, however, a danger in excessive opening-up of the negotiating process. Any efforts to involve the general public (rather than their representatives) in the decision-making process may result in politicisation of the discussions, leading to undue delays in concluding an agreement. Also, in the event that the negotiations are between a private company and the host country, open negotiations may oblige the company to disclose details of its trading practices, which can be used against it by its competitors. Open negotiations are likely to be concluded successfully when, before the actual negotiations, each party draws up position papers (obviously privy to them) including views from their private sector and civil society as well as the government position.

This is a useful exercise, since the private sector may be adversely affected by what their government agrees to, and civil society often ensures that fishing is conducted in a socially responsible manner. The negotiation proper is then carried out by a few mandated persons, backed by their own experts, who must consult their authorities before agreeing on any position with the other party.

The agreements between some Pacific island countries and Japan are considered to be closed in that they are negotiated between private companies or associations and host countries. Strictly speaking, fisheries stocks are natural public resources and, even though it may be understandable that negotiations may be conducted behind closed doors between host country officials and the companies seeking access, the details of the agreements, including agreed monitoring procedures, need to be published. Given the vulnerable position of most of the developing countries granting access, it is in their interest that the negotiations are conducted in an open manner.

Closed agreements are inherently difficult to manage, as the details of monitoring procedures may not be sufficiently disclosed to fisheries authorities to be able to take appropriate action. Also, the companies seeking access may not be aware of the level of fishing effort in the EEZ, since there may be other closed agreements with other companies, which might lower expected returns from their fishing activities.

### 3.3 Bilateral versus Multilateral Negotiations

In negotiations targeting migratory and straddling stocks, such as tuna, it is difficult to see how a fair agreement can be achieved in a bilateral context. The EU, Japan and other Far East countries prefer to pursue a bilateral approach to fisheries access negotiations with host countries, with only the US having signed a multilateral fisheries agreement. The case of the EU is particularly striking, given that the EU itself is a union of countries; it is unimaginable how a small coastal or island state could effectively make its case in the elaborate EU negotiating machinery. The EU has proposed

to reform its trading arrangements with the ACP region, which should come into effect after the current preferential market access treaty (the Cotonou Agreement) comes to an end in December 2007. Under the proposed Economic Partnership Agreements, the EU will favour reciprocal trade arrangements with ACP countries, rather than the current one-sided preferential access agreements. The main challenges to this process will be the relatively low ability of ACP countries to trade with the EU on equal terms (e.g. SPS concerns and low levels of investment in ACP countries). The



issue of fisheries is one of the clusters under the Economic Partnership Agreements slated for negotiation. Under fisheries, negotiations are to be divided into fisheries access negotiations (mainly on tuna, hake, shrimps, octopus and squid) and freshwater fisheries negotiations. Since the EU will not be seeking access to freshwater and most inshore fisheries, negotiations in this aspect will centre mainly on market access (i.e. SPS measures imposed by the EU and tariffs imposed by both parties).

Even under the current proposals to transform fisheries access agreements into Fisheries Partnership Agreements under the broad Economic Partnership Agreements, the EU continues to insist on maintaining a bilateral, as opposed to a multilateral approach. Aside from stock sustainability issues (which may not be guaranteed under a bilateral approach, as explained elsewhere in this report), a bilateral approach to a migratory fishery only encourages 'opportunistic' bargaining, whereby the DWFN moves to the neighbouring coastal nation to 'wait for the fish there' if the adjacent country refuses to sign an agreement. Faced with such an eventuality, the coastal state will sign even when the terms are not altogether favourable.

The merits of a bilateral agreement are that it is easy to implement and the decision-making process is shorter (since decisions are taken at the country, rather than the regional level). It is also appropriate for non-migratory fisheries, such as demersal, cephalopods and crustaceans,

as found in Morocco and Mauritania. Such bilateral agreements would however be unsuitable in situations where the stocks are highly migratory, such as tuna. In these cases, stocks are best conserved under a regional agreement to collectively limit off-take.

A compounding factor to these bilateral agreements is that the DWF fleets are heavily motivated by the apparent subsidies (offered by the DWFN) that accompany them. The DWFN's private sector operators do not pay all the costs for the access arranged by the two countries, and their operations, especially in joint ventures, are often subsidised. Given the mandate of the World Trade Organization (WTO) to discipline fisheries subsidies in the Doha Round negotiations, it is necessary for countries operating under fisheries access agreements to seek to either redefine these financial payments, or seek alternative fishing trade arrangements. As explained elsewhere in this publication, payment for fishing access per se is not a subsidy, but is rather a trade in a good (access to fish). The contentious issues here is who actually pays for the good (government or private sector?) and whether the amounts paid are based on the value of catch (i.e. the resource rent issue), as would naturally be expected under established trade principles. In defining and clarifying fishing access disciplines, the WTO will not only be acting on access subsidies, but also on distortions arising from inconsistencies between value of catch and actual financial payments.

### 3.4 Other Considerations

The developed country negotiating the fisheries agreement is often a major financial donor to the developing country whose fisheries access it is seeking. Failure to conclude an agreement can often affect the level of development assistance that developing country can expect from the DWFN, even for other sectors of the economy. Although this 'tied aid' aspect significantly affects the nature of agreements arrived at between both parties, it is not openly stated by the negotiators nor written into the agreement. The decision of a coastal country to accept or reject an agreement, therefore, will

have to take into consideration factors other than the inherent fairness of that agreement for the fisheries sector.

Many coastal and island countries lack the capacity to exploit their EEZs, given the levels of investment required to acquire efficient vessels and construct land-based infrastructure. Considering that the fish will live and die in the EEZ anyway, with minimal benefit to the country, the coastal state is negotiating access with 'zero options'; the countries seeking access are aware of, and often exploit this advantage.

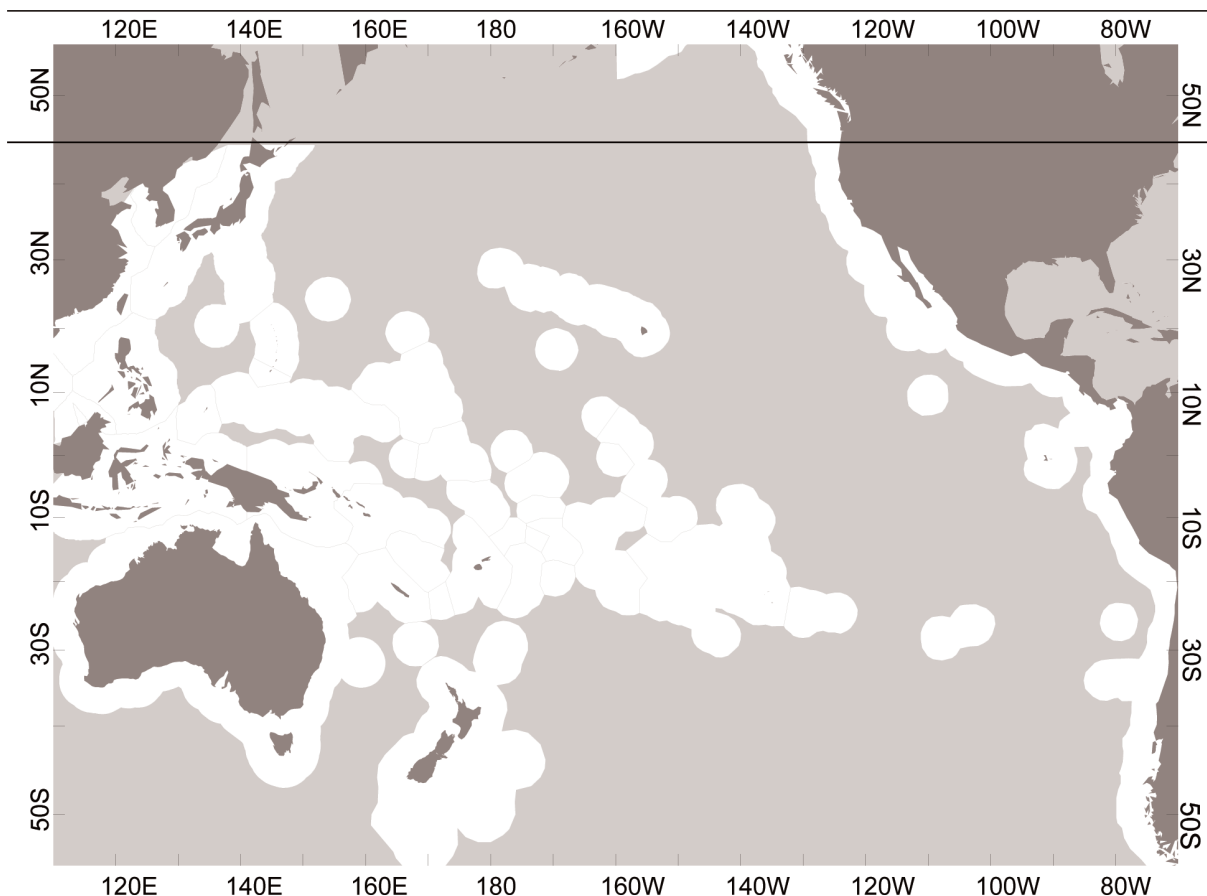
## 4 ANALYSIS OF FISHERIES AGREEMENTS

According to a study conducted for the EU by the French Institute for Research and Exploitation of Fisheries Resources (IFREMER) (IFREMER, 1999), every euro paid by the EU for agreements with developing countries (Southern agreements) generated a turnover of 3.1 euros. EU fisheries agreements with financial compensation generated 240,000 metric tonnes (MT) of fish annually (1993-1997), valued at about EUR485 million; the EU (both public and private sector) paid about EUR187 million in access fees to these countries. Agreements with Northern countries (Norway, Iceland, the Baltic States and the Faeroe Islands) resulted in a catch of 300,000 MT valued at EUR130 million, which was about 25 percent of the total value of fisheries from agreements. Given that compensation in Northern agreements is mainly on the basis of 'cod equivalent', which has never been tried in Southern agreements, it is reasonable to expect that catch in Northern

waters was roughly compensated at market value. The high value reflected by the catch in Southern agreements reflects the high-value nature of species targeted by EU fleets in Southern (mainly African) waters, namely shrimps, octopus, squid, tuna and hake. Species targeted under Northern agreements include sprat, sand eel, capelin, blue whiting and redfish.

This discrepancy in levels of compensation is baffling and looks unfair unless one considers that other factors such as financial aid from the EU to these Southern countries may be playing a role in the agreed figures. If this is the case, then the argument that fisheries agreements are commercial agreements is difficult to justify. There is clearly a need for in-depth analysis of the economic benefits of EU agreements with Southern countries to justify their current compensation levels.

*Figure 1: The Pacific Ocean – An illustration of the overlapping nature of the EEZs in the Pacific island countries (white areas)*



Source: Pacific Forum Fisheries Agency

#### 4.1 Economic Benefits of Agreements: Case Study – Tuna

Fisheries agreements often cover several fish species, such as cephalopods in Mauritania and Morocco, shrimps in Mozambique and the Caribbean and Hake in Angola. Tuna agreements are, however, the most widespread in the three main Oceans of the world – the Pacific, Indian and Atlantic Oceans. This section therefore examines the dynamics and economic benefits of tuna agreements, to review the main issues and impacts of fisheries access agreements. In 1998, tuna catches in the 14 island countries of the Pacific Forum Fisheries Agency (FFA) were estimated at 764,000 MT (22 percent of the global tuna harvest). In 1995, approximately 690,000 MT of tuna was harvested from the region, worth an estimated US\$1.35 billion quayside. DWF fleets dominate these Pacific waters, constituting 905 of the total 1,256 vessels registered in 1998. In 1996, DWFNs paid estimated access fees of US\$66 million. Access fees in several PIC countries contribute in excess of 25 percent of total government revenue. They contribute about 10 percent of GDP in the Solomon and Marshall Islands and between 30 to 50 percent of GDP in Kiribati and Tuvalu (FIAS, 2000). Figure 1 shows the EEZs of Pacific Island countries.

Under the multilateral tuna agreement between the US and the Pacific Island Countries (PIC), the

total fees paid were the same regardless of off-take (US\$21 million per annum). The possibility of under-reporting in one EEZ and over-reporting in another is mitigated by the joint operation of a regional vessel monitoring system (VMS) by the Forum Fisheries Agency, whose operations are funded by the access fees. As mentioned earlier, a particular drawback of this system, with respect to stock sustainability, stems from the fact that the total annual fees are fixed, regardless of off-take value. The Japanese and other Far Eastern countries' agreements are based on reported value of the catch, as determined at certain ports, calculated at about five to six percent of the value of the catch (FFA, personal communication, May 2005). Unless transshipment transpires on land in the EEZ of catch, there may be difficulties in apportioning catch, especially when it comes from several EEZs. From a business point of view, it may be impossible to land catch in every EEZ, given the costs, logistics and limited facilities in the target ports.

Table 1 summarises some of the characteristics of DWFNs in the Western and Central Pacific Ocean (WCPO).

In the Indian Ocean, tuna access agreements are concentrated in the South West Indian

Table 1: DWFNs' tuna off-takes from WCPO and payments (2003)

	US	Japan	China	Korea	Chinese Taipei	EU
Off-take (2003) MT	94,003	366, 783	35,985	208,592	235,188	n.a.
Fleet number	16PS	157LL 35PS 35PL	106LL 8PS	150LL 27PS	153LL, 34PS	5LL 3PS
Financial Compensation/Economic Benefits	US\$21 million to 17 countries	5% catch value	5% catch value	6% catch value	6% catch value	€100/tonne (about 12% catch value)

Source: Off-take and fleet number data, IOTC (2003) and FIAS (2000).

(PS: purse seine, LL: longline, PL: pole and line)



Ocean (SWIO) and the Atlantic coast of West Africa. There is no published data showing the production of tuna by specific EEZs, but total tuna catches in the Indian Ocean are about one million MT annually. The Indian Ocean is second in tuna productivity after the Pacific Ocean (2.8 million MT), with the Atlantic Ocean coming third (0.4 million MT). Indian Ocean tuna catches (purse seine), especially from the SWIO, are about 50 percent Yellowfin and 50 percent skipjack. The WCPO catch is about 70 percent skipjack, which makes it lower in value than that from the Indian Ocean, because of the lower valuation of skipjack in world markets compared to Yellowfin tuna (IOTC, 2003; FIAS, 2000).

Although there is a strong presence of both Far East and EU fleets in the SWIO, almost all of the direct bilateral fisheries agreements have been established with the EU. These agreements, together with those for the West African coast of the Atlantic Ocean (especially Senegal and Cote d'Ivoire), constitute the bulk of EU tuna agreements. Recently, the EU has shown an interest in venturing into the WCPO by signing bilateral agreements with Kiribati, the Solomon Islands and the Federated States of Micronesia. These Pacific Ocean agreements are some of the most lucrative in the region as they involve fee payments at EUR100 per tonne of catch (about

10 percent of the catch value), compared to the average 6 percent paid by most of the DWFNs in the region.

Private licenses payments from EU tuna fishing vessels to host countries constitute about 4.4 percent of the total turnover of the DWF fleet (IFREMER, 1999). This implies that it costs EU tuna companies more to pay licenses within an EU agreement than in private agreements. In addition, countries which have no fisheries agreements with the EU but allow access to EU vessels through access licenses, receive much less financial benefits than those with agreements. Kenya, for example, has licensed about 27 purse seiners and 35 longliners and receives about US\$0.5 million in license fees per year. This is because the tuna fishing industry responds to any effort to raise access fees by seeking licenses in neighbouring countries within the migratory path of the tuna stock, thereby taking advantage of the lack of a regional tuna management mechanism.

Table 2 shows the payments made by the EU for tuna licenses in SWIO countries.

Unlike other species, such as demersals (e.g. hake, snappers), cephalopods and crustaceans, which are resident in a particular EEZ, tuna stocks are highly migratory. This presents a challenge to companies seeking tuna access licenses. Tuna

*Table 2: Breakdown of payments made by the EU (Community and vessel owners) for tuna licenses to countries in the South West Indian Ocean region (1993-1997) and current rates*

Country	Agreement Value ('93-'97) (Euro)	Current Agreement Value (Euro)
Seychelles	17,713,202	24 750 000 (4 125 000/year) 2005-2011
Madagascar	3,630,432	2 475 000 (825 000/year) 2004-2006
Mauritius	2,289,772	1 950 000 (487 500/year) 2003-2007
Comoros	1,404,433	390 000 (2005-2010)

Source: IFREMER, 1999, and [http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/factsheets/facts/en/pcp4\\_2.htm](http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/facts/en/pcp4_2.htm)

fisheries show a high seasonal variation, which forces most DWF fleets to buy several licenses in countries along a particular migratory stock path. These are called 'monitoring licenses' and a vessel may purchase up to nine such licenses in one year to ensure that it has the flexibility to follow the seasonal fluctuation of the geographical location of the fish.

Tuna stocks are concentrated within the tropical region, between 10°N and 10°S of the equator.

There are also established tuna concentration belts, especially in up-welling regions (such as the Yellowfin tuna belt on the East African coast).<sup>4</sup> Tuna access fee levels, however, do not reflect this geographical spread and a country's chance of maximising payments depends on its negotiating skills, as well as logistical factors, such as the presence of efficient ports with fishing support services, ample space, and social and environmental facilities.

## 4.2 The Resource Rent: The Basis of Access Payments?

Fisheries, like minerals and forestry, is a natural resource, to which a country allows access for a financial payment. The established principle in calculating payments is based on the 'resource rent concept'. A resource rent is defined as the excess revenue over and above the costs of production. This rent constitutes profits to the company and fees to be paid to the government. A healthy fishery (whose stocks are being exploited below their MSY) generates more resource rent than a fishery under collapse because it takes much less cost (effort) to generate a given amount of revenue. Under a pure form of resource rent tax system, a firm would have to disclose all revenue and operating costs to the host country. For example, a firm generating US\$100,000 in revenue and paying US\$50,000 operational costs would have US\$50,000 left to divide between fixed capital investment costs, return on managerial skills, profits and access tax payments. If the access tax is agreed at 40 percent, this would amount to US\$20,000, leaving the firm with US\$30,000. This pure form of resource rent tax (RRT), as proposed by Garnaut and Ross (1975) is applied on natural resources such as petroleum in Australia. The difficulty of applying this pure form of RRT in migratory fisheries such as tuna is that it is nearly impossible to oblige foreign operators to declare accurately their revenues and costs. In addition, unless applied in a regional context, DWF fleets respond to any 'hard bargains' by shifting attention to neighbouring EEZs, as noted above.

Resource rent calculations would need to factor in the fact that if suitably managed, fish

stocks are generally renewable, as opposed to minerals which are generally non-renewable. In principle, resource rent for a natural good such as fisheries is owed to the state, as opposed to trade in goods produced through activities such as agriculture, where the government does not have a strong claim. Ideally, resource rent paid to governments should be used to improve the capacity of nationals to exploit the same resource, thereby eliminating the need to charge resource rent. In this case, the government could then revert to taxation as a means of revenue collection from the newly-formed national enterprises.

The aim of negotiations for a government granting fishing access is to capture as much resource rent in the form of access fees as possible, while at the same time allowing the companies to retain reasonable profits to sustain their operations. Even though, from a pure business point of view, it does not matter who is seeking access (whether a citizen or a foreigner), governments have a duty to promote the development of their citizenry and, therefore, may opt to seek less resource rent if the applicant is a domestic company. The ideal situation would be where a country has enough capacity to exploit its EEZ. However, if this is not the case, and if there is a demonstrated presence of excess stocks, countries are better off allowing fisheries access to foreign fishers if the financial payments are fair and favourable. It is, however, not proposed that 'all countries should fish their own fish' because this would be akin to proposing that 'all countries should drill their own oil, using only local companies'.

Provided that a country captures a fair share of resource rent and local fishing communities benefit adequately from their fisheries resources, fishing should be treated quite similar to other renewable natural resources.

Given the low levels of investment in fishing necessary when compared to other activities such as mining, it is difficult to justify resource rent levels below 30 percent of the value of the catch. This contrasts with the current situation where tuna access payments are hardly 3 percent of the catch value and all fish access payments are about 2 to 17 percent of the catch value (IFREMER, 1999). These figures hardly represent the resource rent of the fisheries being accessed. The net effect has been a predictable withdrawal of countries from granting access, once their capacity to exploit their EEZ improves. The

lack of other options for the coastal state means that the DWFN captures more rent, while (ironically) the coastal state uses what funds it gets to develop its own fisheries or other capacities, to the point where it can fish its own waters. This in turn increases the value of the fish for the coastal country and implies (through the opportunity cost rationale for rents) that they would require more rent and would charge the DWFN higher fees. Unless the principles of fisheries access payments are reviewed to ensure fair and favourable compensation for the resource, they may soon be characterised as 'options of last resort', by poor countries unable to build domestic capacities to undertake their own EEZ fishing. In their current form, the agreements tend to be exploitative and are not in line with international agreements on poverty eradication and sustainable development.

### 4.3 Indirect Impacts of Fisheries Agreements: Employment

Fisheries access agreements generate substantial employment in both the DWFNs and the host countries. In DWF regions and countries (such as Spain), in which a large proportion of fishery sector jobs are associated with fisheries agreements, the political consideration to keep these large numbers of persons employed acts as a major component of the *raison d'être* for negotiating agreements, as explained below.

Tuna agreements in the Pacific Island Countries employ about 10,000 persons from the region directly and an average of 20,000 persons indirectly (FIAS, 2000). The tuna industry accounts for six to eight percent of total employment in the region. EU Southern fisheries agreements supported 13,400 jobs in the EU directly and 19,400 jobs in the EU indirectly in 1997 (IFREMER, 1999). Direct jobs include ship crew, fishing factory staff and all staff associated with fishing. Indirect jobs include shipbuilding, supplies manufacture and activities associated with repair and maintenance. The same EU agreements support 2,400 jobs in Southern countries. The bulk of this employment came from four countries: Morocco, Cote D'Ivoire, Senegal and Mauritania. Argentinean agreements employed about 540 persons from that country in 1997.

Employment of specified numbers and types of crew from developing countries is incorporated into most fisheries access agreements. Under the Cotonou Agreement between the EU and ACP countries, fish from ACP waters is granted originating status (under the EU rules of origin) only if 50 percent of the crew is from the ACP or EU and if they are employed in substantive positions on the ship, including the ship master. Many DWF fleets usually comply to an extent with this requirement, but the levels are still unsatisfactory in most countries. In some cases, the DWF fleets choose to pay off the required salaries to the countries, without actually having the crew on board. Several reasons to explain this reluctance include a lack of skilled personnel in most developing countries, incompatibilities of different crew owing to different cultural backgrounds and logistical costs of docking in several EEZ ports to allow for embarking and disembarking of the different crew. The employment of crew on board works best in countries where DWFNs have set up either a logistical base for refuelling and boat servicing, or value addition activities such as canning.

#### 4.4 Value-Added Activities

EU fisheries agreements contributed about EUR944 million per year to EU enterprises in the period 1993 to 1997 (IFREMER, 1999), with 75 percent of this value-added being coming from Southern agreements. Direct value-added activities include repair and maintenance, supplies and processing such as canning. In the same period, indirect value-added amounted to EUR650 million per year, with 78 percent from Southern agreements. Indirect value-added activities include upstream and downstream activities such as support services for shipbuilding, port activities, fishing and canning. Some ports in countries such as Spain (e.g. Vigo, Las Palmas and Cadiz) depend highly on these value-added activities for their economic survival.

The annual revenue from direct value-added activities from EU fishing in Southern countries for the period 1993-1997 was estimated at EUR53 million and EUR95 million to Northern countries. The direct value-added revenue came mainly from port charges, taxes and wages. Indirect value-added revenue from Southern agreements for

the same period was estimated at EUR45 million. This included ship and net repair and services to crew in Cote D'Ivoire, Senegal, Seychelles and Madagascar, which amounted to EUR7.8, 1.5, 3.8 and 2.2 million respectively, in 1997.

In the Pacific island states, several countries have invested in port services such as refuelling and transshipment, with some having value-added activities such as canning. The low GDP levels in some of these countries, coupled with their small populations, may not allow for setting up investments which capture most of the value-added activities. The annual expenditure by tuna fishing vessels in FFA island member states approached US\$100 million in 1998, benefiting local economies through job creation and increased tax revenue. Some DWF fleets, such as Japanese longline fleets, target species that are exclusively for fresh *sashimi* markets in Japan. This entails minimising the time between catch and marketing and hence the frequent requests by these fleets for transshipment at sea in EEZs that are not close to convenient ports.

#### 4.5 Socio-Economic Impacts of Agreements on Local Fishers: Plough-Back

In general, most fisheries access agreements do not guarantee that payment fees will be ploughed back into the host country's fisheries sector. A significant number of agreements mention commitments to develop fisheries in the country granting access, but this is left to the discretion of the host country, with no verification or sanction mechanisms for default. Some countries such as Seychelles and Madagascar have managed consistently to use access payments for fisheries development, a factor that has been attributed mainly to the fact that the agreements were initially prompted by their fisheries authorities. Increasingly, fisheries agreements contain 'targeted actions' such as 'greener provisions' involving sums of money to be spent on stock management, research and policy development activities. There are, however, no mechanisms by which the DWFN can compel the recipient country to spend the money on the activities specified in the

agreement. Financial compensation essentially becomes part of the government revenue and is often allocated to areas prioritised by the central government in normal budgetary allocations.

Development of the fisheries sector can be carried out in various ways including, for example, the development of shared infrastructure such as landing ports, ice production and fish roads. Funds can also be provided as cheap credit to fishers to purchase equipment and gear and develop their trade. Funds from fishing access agreements could also be used to develop other sectors of the economy, such as education. However, given the weak bargaining position of most developing coastal countries during fishing access negotiations (owing to lack of other alternatives), a policy to develop domestic fishing capacity may not only help the country capture the various social

benefits of a domesticated fishery, but would also improve their bargaining power should they wish to continue with access agreements. It is however acknowledged that this policy may not work for several small island developing countries, whose populations and GDPs may not economically sustain an extensive fishing industry in their EEZs. Considering that fisheries in an EEZ of a country are a natural resource for the whole country and not just coastal fishing communities, one may ask: 'what is the justification of this targeted development?' The justification is that the country is allowing access to DWF fleets because it lacks the capacity to exploit its EEZ, mainly because it does not have the required infrastructure, but also because the DWF fleets operate with the benefit of such high levels of subsidies that a local fleet may not be able to compete, unless also subsidised. Having said that, if host country governments channel funds from fisheries agreements to

improve their fishing infrastructure, this is not considered a subsidy as it is the duty of national governments to provide a shared infrastructure to its citizenry.

Access payments can also be used to meet fisheries management costs, especially implementation of MCS measures, as well as research activities such as stock assessment. These activities are necessary to ensure that stocks are conserved to guarantee sustainable revenues from fisheries access payments. Given that governments may want to over-license catch (beyond MSY levels) for short-term gain, especially when payments are destined for budgetary support, there is a need for bilateral and regional efforts to ensure that activities which are aimed at sustaining stocks and building non-destructive local EEZ fishing capacity are financed from access payments.

#### 4.6 Resource Conflicts and Fisheries Agreements

In certain situations such as demersal, cephalopod and crustacean fisheries, the DWF fleets often find themselves in conflict with domestic fleets. Local fleets in many coastal countries operate within 12 nautical miles (coastal or territorial waters), whereas DWF fleets operate mainly in the EEZ region and beyond. In many countries, however, the local fleets have acquired the capacity to venture beyond 12 nautical miles, where they encounter foreign fleets. The forms of conflict frequently experienced include:

- Destruction of domestic fishing gear (where the fishing methodologies are different, or target species differ); and
- Competition for the same stocks, with domestic fleets, which often use less efficient gear, being disadvantaged.

Coastal countries have tried to address this issue by implementing measures to define operational zones for domestic and foreign fleets and by requiring domestic vessels operating in the EEZs to obtain further licenses. This latter measure is often contested as unfair by the domestic fleets, as the recent (2005) conflict between artisanal

and industrial fishers in Senegal illustrates.

Another source of conflict occurs in the destination markets for target species. Most destination markets for fisheries such as tuna, cephalopods and crustaceans are in the DWFNs. A domestic fleet, therefore, finds itself competing for customers with the DWF fleet in its home waters. The DWF fleet has a clear 'home advantage' in terms of market familiarity and most DWFNs impose strict sanitary and phytosanitary (SPS) measures on fish imports into their countries. These SPS measures, such as traceability requirements and frequent accredited laboratory tests, are expensive for developing countries. This unequal competition often translates into tensions in the fishing grounds.

The unequal competition also stems from the fact that, particularly under the EU-ACP Cotonou Agreement, rules of origin for fisheries are defined such that the 'origin' of a fish depends on the ownership of the boat and the nationality of its crew. This means that, for example, an EU vessel fishing in Kenya's EEZ will have its cargo considered as EU cargo upon entry into any EU



port. A Mauritian vessel operating alongside the EU vessel, but with Mauritian crew will have its cargo considered as Mauritian fish, even if caught at exactly the same location. In terms of market access, the Mauritian cargo will be subjected to more rigorous SPS checks than its EU counterpart. This is so because, even though the EU Directive 91/493 on handling and processing of fish and fishery products for human consumption is supposed to apply equally to both EU and non-EU processing establishments, imports from EU vessels operating abroad apparently do not undergo the rigorous 'EU entry-port' checks applied

to consignments from foreign vessels. What is more, the subsequent products processed in the EU from this fish undergo hardly any checks prior to marketing. Considering that neither the construction of the Mauritian ship nor its operations were subsidised, these measures substantially increase the cost of doing business for any local fleet seeking to invest in EEZ fisheries. In this way, rules of origin, when applied to a segment of competitors already disadvantaged by the subsidies enjoyed by their counterparts, compound to create unfavourable market access conditions for many domestic EEZ fleets of developing countries.

## 5 FISHING SUBSIDIES AND THEIR IMPACT ON COMPETITIVENESS OF THE DWF FLEETS AND LOCAL FISHERS

The WTO Agreement on Subsidies and Countervailing Measures (SCM) contains multilateral disciplines to regulate the use of subsidies and countervailing measures to offset injury caused by subsidised imports. These general rules establish the conditions under which WTO Member governments may provide subsidies. Enforcement of these rules is through the WTO Dispute Settlement Mechanism.

As defined by the SCM Agreement, a subsidy is deemed to exist if there is any financial contribution or price support by a government or public body that confers a specific benefit on a domestic industry (Article 1). The SCM Agreement is aimed at subsidies extended by WTO Member countries at the domestic level that have the capacity to distort international trade. The SCM Agreement contains three categories of subsidies, namely prohibited subsidies, actionable subsidies that are subjected to disciplines where 'adverse effects' are demonstrated causing 'serious prejudice', and permitted subsidies (although these exceptions ran out in 2000 and have not been renewed). Provision for the special treatment of developing countries is provided in Article 27.

Fisheries access agreements do not fit the conventional dynamics of international trade. The good (access to fish) is usually negotiated (traded) at the government level and distributed to the private sector at minimal cost. The capacity to access fish is usually also subsidised. A further complication comes from the 'global commons' nature of fisheries, at least with regard to migratory and straddling stocks. Sustainability of such stocks requires a wider co-operation beyond the two parties negotiating access. Thus, there are both trade and resource sustainability issues involved in fisheries subsidies.

As noted above, the SCM Agreement contains general rules disciplining subsidies; it does not contain any provisions specifically related to fisheries subsidies. There are, thus, limitations

in using the SCM Agreement to encompass the full extent of the effects of subsidies in the fisheries sector.

WTO Members reached agreement in the Doha Ministerial Declaration (DMD) in 2001 to undertake negotiations on fisheries subsidies. In the context of these negotiations, WTO Members agreed to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries (Paragraph 28 of the DMD). Since the Doha Ministerial Conference, negotiations have aimed at identifying the specific fisheries subsidies that would be targeted for 'disciplining'.

Various other fisheries-related international organisations, such as the Food and Agriculture Organization (FAO), the Organisation for Economic Co-operation and Development (OECD), the United Nations Environment Programme (UNEP), as well as non-governmental organisations such as the International Centre for Trade and Sustainable Development (ICTSD) and the World Wide Fund for Nature (WWF) have contributed to the debate on fisheries subsidies. The fisheries sector is a complex area, with intricate and widespread subsidies in place. Subsidies currently exist for artisanal fishing, processing and other value-added activities, EEZ fishing and aquaculture. Under EEZ fishing, there are subsidies associated with fisheries access agreements, which is the subject of this section.

Discussions on fisheries access agreements and subsidies have tended to concentrate on two aspects: (i) conferment of benefits (through access fees) to developing countries and the DWF fleets; and (ii) production and supply distortions resulting from subsidies given to DWF fleets by their home countries. This section discusses these two important aspects, but lays emphasis on a third and critical issue - *fisheries access agreements are rarely based simply on trade and their associated subsidies impede developing coastal and island states from*

*exploiting their EEZs.* Fishing access subsidies, therefore, should not be seen only in terms of the 'access fee subsidies'. Associated subsidies, such as for shipbuilding and financing, targeted at DWF fishing, are of greater magnitude and arguably are more trade-distorting.

According to the World Bank (1996), global fisheries subsidies vary between US\$14 and US\$20 billion, which is approximately 20 to 25 percent of the turnover in this sector. These subsidies are mainly in shipbuilding, access fees, processing facilities, partnership joint ventures and financing. Proposals in the current WTO negotiations on fisheries subsidies centre around the categorisation of subsidy types into the 'red' (prohibited), 'amber' (actionable) and 'green' (permitted) boxes and the need for appropriate special and differential treatment measures. Capacity-building is one of the criteria being discussed to determine the categorisation of subsidies. Capacity-enhancing subsidies (such as shipbuilding subsidies) are generally regarded as falling in the prohibited 'red' box. 'Green' subsidies on the other hand could include subsidies for environmentally-

friendly technologies such as those aimed at by-catch reduction for endangered species such as turtles.

The trade-distorting aspects of fishing subsidies, which are considered the main hindrance to the exploitation of EEZ fisheries by developing countries, are crucial and lie within the WTO mandate to regulate international trade.

Access fees, shipbuilding subsidies and financial subsidies are the main subsidies associated with fisheries access agreements in most countries. There are a myriad of other subsidies associated with fishing access, including vessel transfer subsidies, subsidies for joint ventures, transshipment and landing subsidies and subsidies associated with the processing of catch obtained from access agreements. These are important, but are not as universally practised among DWFNs as the earlier three. This section discusses the main aspects of fisheries subsidies and explores some of the options to mitigate their negative impacts on trade and resource sustainability.

## 5.1 Subsidies in Access Payments

As discussed earlier, 70 to 80 percent of EU and US fisheries access fees consists of payments from governments. Are all fishing access payments subsidies? It is difficult to classify fisheries access payments as subsidies in their entirety. Fishing access payments take place at two levels, as discussed below.

### *Government-to-Government Level*

In a fisheries access agreement, the host country is legitimately trading in a natural resource, which is its right as enshrined under UNCLOS. The DWFN seeking access is not extending any favour; it is purchasing a good (access to fish). At this level, therefore, the access fees paid cannot be considered a subsidy and should be excluded from WTO disciplines. This trade is akin to country-to-country trade in minerals, or even hydro-electricity and any effort by the WTO to deny developing countries this revenue would be equivalent to discouraging

hydro-electricity trade between two countries. One complication associated with this position is that some countries are paid fees unrelated to amounts of catch (e.g. the US-PIC agreement). In this regard, these agreements are distinguishable from those providing for the sale of a certain amount of fish for a certain fee (the EU and Japan agreements). In both cases, however, there is a clear intention to monitor catch amounts.

### *Government-to-Private Sector Level*

At the government-to-private sector level, the standard practice among most DWFNs is to extend the purchased access at minimal cost to their private sector; DWF fleets rarely pay more than 30 percent of the total access fee. Is this a subsidy to the DWF fleet? Traditionally, the arrangement has been that DWF fleets undertake to fish using subsidised ships, in areas whose access is subsidised and



under trading arrangements where financing is subsidised. It is important to consider that fishers in domestic waters of the DWFN fish almost free of any access fees. From a DWFN's point of view, therefore, charging access fees to their DWF fleets to fish in distant waters may amount to over-taxing fishers, compared to their domestic counterparts, and this could distort the international price of the targeted fish.

The treatment of the domestic fleet of the developing country granting access needs to be taken into consideration. It would be unfair for the domestic EEZ fleet to be subjected to high taxes or fees, while operating alongside foreign fleets whose fees have been paid for by their home country. This would render the operations of the developing country less profitable and work against any effort to increase domestic EEZ fleets. Assigning subsidy status to access fees needs to take into account a broad analysis of the taxation context within which both the domestic and DWF fleets operate. It could also be the case that DWF fleets pay higher fees than their local counterparts to fish in the same EEZ waters.

Ideally, government (host)-to-private sector (DWF) agreements would be the most effective way to ensure that foreign fleets directly pay for access. Considering the current complexities of existing government-to-government access

agreements, which often include tied aid, and the assurance to the host state by the DWFN of a one-time payment (which is then included in national budgets), any sudden change to the government-private sector approach would not be suitable to host countries. This is because there are often several different private sector players in an EEZs, even from one DWFN, and there is no guarantee of their working together. A host government might therefore have to negotiate with several companies, and this is time inefficient. In addition, not all the private sector players may pay, and certainly not at the same time, introducing complexities that may make budgeting on this fisheries income (which may be up to 40% of GDP in some countries) very difficult.

It is important to disentangle the fact that fishing access subsidies is not equivalent to fishing access payment subsidies. Access payment is about securing a fishing ground for a DWF fleet by a DWFN, and could be analysed according to the argument detailed above. Fishing access subsidies however are much broader, and include the capacity subsidies (shipbuilding or modifications) and financial subsidies provided to enterprises involved in fishing under access arrangements. If indeed a taxation analysis shows that access payment by a DWFN is a subsidy to their DWF, then access payments would be added to the long list of subsidies associated with fishing under access.

## 5.2 Fishing Vessel Building Subsidies

It is common practice for DWFNs to subsidise the construction of fishing vessels.<sup>5</sup> A purse seiner, the fishing boat of choice in the oceans where DWFNs operate and particularly for tuna, is an expensive and sophisticated vessel. It is up to 120m long and has capacity for about 2,000 to 4,000 MT of tuna, with tuna nets one to two kilometres long and 250-350 metres deep, freezing facilities, small boats for netting activities, radar facilities for spotting fish schools and sophisticated communication devices. A purse seiner currently costs between US\$3 to 10 million, with a capacity to fish about 10,000 to 16,000 MT of fish a year (about 280 days activity, taking into account rest and repair days). The

dilemma for an entrepreneur in a developing coastal state is the following: "Does it make sense to buy a ship of this enormous cost only to operate in a fishing ground alongside others vessels that are subsidised up to 40 percent at purchase and operations, and expect to recover costs, given that all vessels still have to market their catch in the same destinations?"

While a genuine desire to halt fishing vessel construction subsidies now exists, the difficulty is how to mitigate the trade distortions that are being caused by the subsidised vessels and firms, which have benefited from subsidisation. Data from DWFNs on the levels of subsidisation

**Box 1:**      *The case of Korea's ship-building subsidies*

In 2002, the EC initiated a complaint in the WTO under pressure from European shipbuilders, against Korea concerning certain measures establishing subsidies to its shipbuilding industry which, according to the EC, were inconsistent with Korea's obligations under the SCM Agreement. These subsidies helped South Korea to sell their ships at 40 percent below cost, a factor which enabled South Korea to become the world's premier shipbuilder. In 2003, South Korea had 43.5 percent of the global shipbuilding market, while the EU accounted for 8.7 percent. Japan was the second biggest shipbuilder, with 28.6 percent and China was third with 12.6 percent.

The measures at issue were: (i) corporate restructuring subsidies in the form of debt forgiveness, debt and interest relief and debt-to-equity swaps, provided through government-owned and government-controlled banks; (ii) special taxation programmes limited to companies under corporate restructuring; and (iii) pre-shipment loans and advance payment refund guarantees provided by the state-owned Export-Import Bank of Korea ("KEXIM") to all Korean shipyards. The EC indicated that the subsidies in question were granted with respect to the production of commercial vessels for international commerce.

Ruling in favour of the EC, the WTO dispute settlement panel report issued in March 2005 said that the EXIM-arranged financing amounted to prohibited export subsidies under the SCM Agreement. South Korea highlighted what it said was the core issue, in which the panel ruled in its favour by rejecting the EC claim that it had suffered "serious prejudice" from corporate restructuring of loans to three South Korean shipbuilders, Daewoo, Samho and Daedong. The EC had alleged that the loans were prohibited subsidies in the form of debt renegotiation and restructuring, fiscal advantages and loans. South Korea won in the main part of the dispute with respect to whether support for corporate restructuring is tantamount to subsidisation, paving the way for maintaining its status as the world's top shipbuilder. European shipbuilders claimed the subsidies helped South Korean companies sell their ships at below cost, while Korea countered that its industry was simply more competitive.

In April 2005, the WTO gave Korea ninety days to stop the Export-Import Bank of Korea (EXIM) from offering re-shipment loans and advance payment refund guarantees to South Korean shipyards. South Korea responded that since all loans and guarantees had now been repaid or had expired, Korea considered that it was in compliance with WTO rules and no further action was required. The EC did not agree that there was nothing to be done in this regard (WTO, 2005).

for shipbuilding are difficult to attain, but the recent trade dispute in the WTO between the European Communities (EC) and South Korea on shipbuilding subsidies (*Korea-Commercial Vessels*) helps to illustrate the point (see Box 1). Unless fishing vessel subsidies are eliminated, only DWFNs will continue to fish the EEZs of most coastal developing countries. Even if the subsidies are stopped today, most DWFNs already have all the vessels they require. In

fact, DWFNs currently have overcapacity. If we consider 30 years as the average age at which a fishing ship is no longer economically viable, then most developing countries without the capacity to subsidise shipbuilding will have to wait 30 years to compete in their waters with only unsubsidised ships. In other words, to a large extent, the damage has already been done. Eliminating shipbuilding subsidies now will only marginally help to level the trading field. In

this regard, there is an urgent need to undertake an inventory of all DWF vessels and to calculate their combined subsidy levels. The results should be used as a basis for allowing developing coastal

and island countries to subsidise their fishing industries for a given period of time, regardless of whether the funds originate from development grants or domestic budgets.

### 5.3 Subsidies on Financial Credit

Financial subsidies aimed at increasing the competitive advantage of DWF fleets are common in the fishing industry. These subsidies occur in several forms such as: lower-than-average interest rates, guarantees on capital and operational loans, or grants for some fishing-related activities. Considering that a lack of funds is the greatest impediment to domestic investors in developing countries and that interest rates are rarely below ten percent (whereas interest rates in many developed countries are in the range of three to five percent), these subsidies represent the biggest impediment to the competitiveness of EEZ fishing by developing country fishers. Given their cross-cutting nature, financial subsidies to the fishing industry have not been specifically targeted under the process of disciplining fishing subsidies.

The *Korea-Commercial Vessels* dispute at the WTO was mainly about credit subsidies, as the EXIM bank of South Korea sought to offer re-

shipment loans and advance payment refund guarantees to South Korean shipyards.

Although the result of a stable macroeconomic environment, the current low levels of interest rates in most developed countries are the products of prudent government planning and intervention. In ACP countries, interest rates are often above 15 percent, even for loans of more than US\$1 million. The volumes of investment required in the fish export business (US\$2.5 million is the minimum required to establish a basic facility which meets EU requirements) means that credit with interest rates above 5 percent is not attractive. This kind of credit is found only in off-shore banking facilities, which stipulate minimum borrowing amounts and conditionalities that make them inaccessible to most ACP businesses. The availability of subsidised credit for DWF fleets, therefore, offers a competitive edge, which further complicates any efforts by developing coastal or island states to develop their EEZ fishing capacity.

## 6 ENVIRONMENTAL AND STOCK SUSTAINABILITY ISSUES

Fisheries access agreements give rise to serious concerns related to the environment and stock sustainability. By their very nature, fisheries access agreements allow a DWF fleet short-term access (usually three to five years, with annual evaluation and renewals), often in competition with other DWF fleets for stocks in the same waters. Access agreements are usually granted by developing countries in waters that:

- do not have established maximum sustainable yields (MSY) or total allowable catch (TAC);
- do not have regional collaboration on total off-take; and
- do not have functional regional or national monitoring, control and surveillance (MCS) systems.

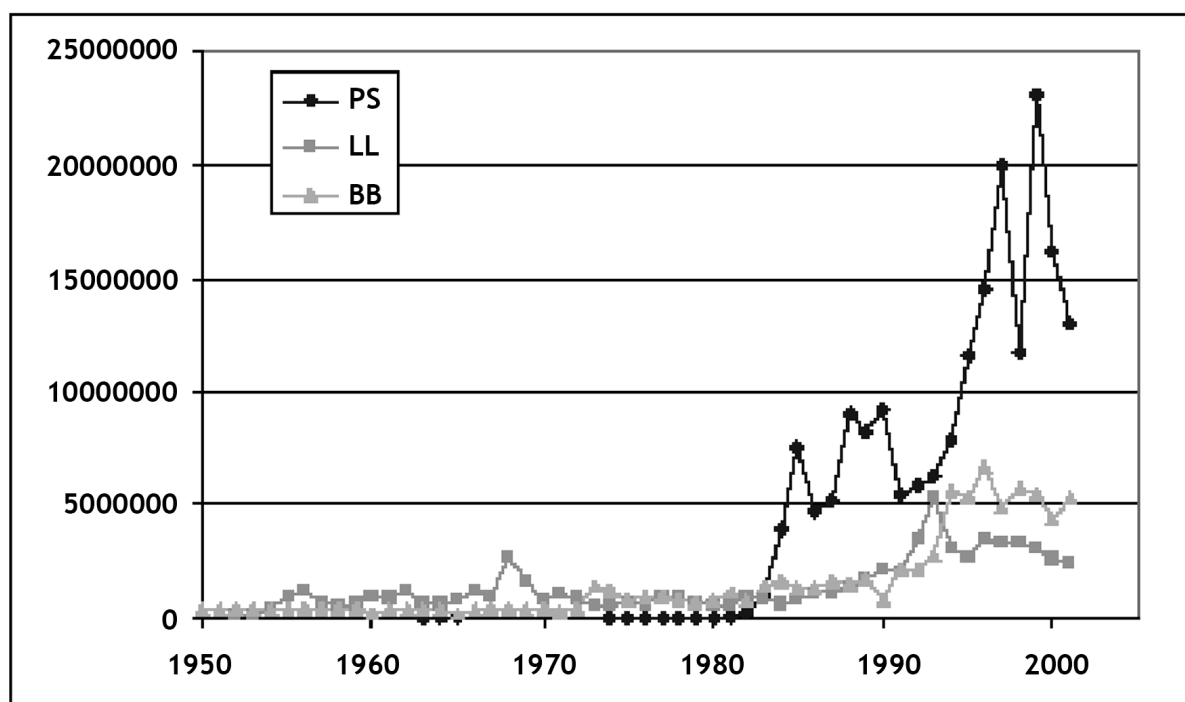
Since mechanisms do not exist to punish or reward players depending on their degree of stock conservation practices, the tendency of most vessels is to maximise catch in the given fishing period. Several agreements, such as the USA tuna agreement with the PIC and licensing

systems on the East African coast do not even consider off-take in their payments. The absence or inadequacy of MCS systems has encouraged significant IUU fishing in these waters.

The net effect of this disregard for stock sustainability measures in fishing under access arrangements has been a serious decline in some of the targeted stocks. It is often the case that local fleets which fish alongside DWF fleets become sufficiently efficient that even when the EU fleet leaves, as in the current case in Morocco (for octopus and squid), the stocks decline rapidly.

In the Indian Ocean, stocks of Yellowfin tuna are estimated to have an MSY of 280,000 to 320,000 MT. In 2002, the reported catch of Yellowfin tuna was 312,000 MT. Given the non-comprehensive nature of data reported from this ocean, it is safe to assume that this fish is already being caught at its MSY level. The MSY of Bigeye tuna in the same ocean is estimated at 89,000 to 102,000 MT. In 2002, total catches of Bigeye

Figure 2: Catch in numbers of Yellowfin tuna by gear over time, in the Indian Ocean



(PS: purse seine, LL: longline, BB: baitboat)

Source: IOTC, 2003.

were estimated at 128,000 MT, indicating that this fish is already being harvested beyond its MSY (IOTC, 2003). Swordfish stocks are already considered to be over-fished and there are efforts to discourage any further increase in fishing effort in the Indian Ocean. This high fishing effort has not always been the case in the Indian Ocean. It significantly increased from 1982 onwards when several vessels, originally operating in the North Sea and other Northern waters, moved into the region, especially the South West Indian Ocean (SWIO) where the bulk of tuna stocks are located. Figure 2 illustrates this increase in effort for Yellowfin tuna catch, particularly by purse seines.

The increase in fishing effort in the Indian Ocean occurred in the absence of corresponding increases in fisheries access agreements or payments. There are no fisheries access agreements

between Somalia, Kenya and Tanzania and any DWFN, despite the fact that the 'Yellowfin tuna belt', which is targeted by both EU and Far East vessels in the South East Indian Ocean, is located on the periphery of the EEZs of these countries.<sup>6</sup> In addition, total payments under EU agreements with Indian Ocean countries amounted to between four and five percent of the value of catch which, although it should be lower than that paid to the PIC because stocks are much less (about half), is unjustifiably low. One explanation for these low tuna fees in the region is the lack of a regional approach by both coastal and island states to tuna harvesting by DWFNs, leading to the poor bargaining powers exhibited by the nature of the agreements. The fact that stocks are already suffering, even before appropriate payments have been made for access, illustrates that there is an urgent need to act regionally to sustain this resource.

## 6.1 FAO Code of Conduct for Responsible Fisheries

The FAO Code of Conduct for Responsible Fisheries of 1995 was the culmination of a lengthy process that sought to foster a fundamental reorientation of priorities for fisheries resources, as a result of growing concerns that exploitation trends in world fisheries were approaching or had surpassed sustainable levels. The Code of Conduct enshrines the principle that the right to fish carries with it the obligation to do so in a responsible manner, in order to ensure effective conservation and management of living aquatic resources.

The Code of Conduct encompasses the following broad areas:

- Fisheries management, including monitoring and surveillance of fishing fleet;
- Fishing operations at sea;
- Aquaculture development;
- Integration of fisheries into coastal management;
- Post-harvest practices and trade; and
- Fisheries research.

Article 6 of the Code of Conduct delineates the following principles related to fisheries access agreements in EEZs.

**Article 6.3:** States should adhere to management measures to ensure a balance between fishing effort and sustainable utilisation of the resource base, guard against over-harvesting, over-capitalisation and excess fishing capacity and seek to rehabilitate resource populations as and when it is necessary.

**Article 6.5:** Precautionary approaches should be applied to conserve aquatic ecosystems and resources based on best available scientific evidence. Absence of adequate scientific information should not be an excuse for postponing conservation measures.

**Article 6.11:** States should ensure that vessels authorised to fly their flags adhere to the proper application of this code, respect conservation and management measures taken in accordance with international law, and adopted at national, regional, or global levels and fulfil obligations concerning fisheries data collection and provision.

Clearly, this international convention to which most DWFNs and coastal and island countries are signatories is rarely enforced, even though it is often mentioned in fisheries

access agreements. It is understandable that it takes huge budgets and considerable time to conduct stock assessment in order to determine

allowable effort, but this is no excuse for not implementing the 'precautionary approach' principle enshrined in the Code.

## 6.2 UN Convention on the Law of the Sea

The general principles of the UN Convention on the Law of the Sea (UNCLOS) are detailed in section 1. From a stock sustainability perspective, UNCLOS is about 'rights and obligations', in that:

- It extended rights to all resources within 200 nautical miles to the immediate coastal country, which increased jurisdiction of coastal and island countries, allowing only 'innocent passage' through their waters. With this extension of the right of jurisdiction comes the obligation to ensure sustainable management and conservation of living aquatic resources within the EEZ.
- It gave coastal and island countries the right to allow fishing access to other states for excess stocks. In principle, no country should grant fishing access to another unless it has a demonstrated 'excess stock' of the target species. Even though the Convention states that coastal countries "shall allow" access to the excess stocks, it also gives coastal states the right to determine whether indeed there is a surplus in their stocks, and hence sufficiently protects the countries from obligations to allow access. This condition necessitates stock assessment or other appropriate methods of estimating stocks and sustainable catch levels as a precondition to a fisheries access agreement. Over time, negotiations between coastal states and DWFNs have relied on 'historical catch' to guide levels of fees, with little or no reference to TACs or MSYs. In situations where the stock is migratory (e.g. tuna), every country within the migratory path of the fish seeks to negotiate the highest off-take level to attain the highest level of fees. This 'scramble' for fish encourages excessive off-take beyond MSY levels, with no country wishing to play 'nice guy' and unilaterally reduce effort.
- It requires both host nations and DWFNs to manage the fishing activities of their fleets. This implies joint collaboration in implementing MCS measures, and co-ordination of information on the flag status of vessels either seeking entry to or operating in an EEZ. In many fisheries access agreements, the budget for enforcement is inadequate. Recently, DWF fleets operating under access agreements have increasingly been urging host nations to enforce MCS, particularly with respect to fleets operating in the same waters but outside agreements, because the latter often engage in IUU fishing.

## 6.3 UN Agreement on Straddling Stocks and Highly Migratory Species

The United Nations Agreement on Straddling Stocks and Highly Migratory Species of 1995 is seen as a good starting point for providing a comprehensive and legal guide to facilitate conservation and sustainable use of large migratory fish that straddle EEZs. The Agreement integrates conservation measures, such as a precautionary approach, impact assessment, ecosystem management and biodiversity management in the framework of fisheries management. The Agreement seeks to:

- adopt measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimal utilisation;
- ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, including the special requirements of developing states;



- apply the precautionary approach;
- assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with the target stocks;
- minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated species through measures including the development and use of selective, environmentally-safe and cost-effective fishing gear and techniques;
- take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- take into account the interests of artisanal and subsistence fishers;
- collect and share complete and accurate data concerning fishing activities on vessel position, catch of target and non-target species and fishing effort; and
- implement and enforce conservation and management measures through effective monitoring, control and surveillance (MCS).

These objectives are to be met through:

- strengthening the roles of regional and sub-regional fisheries organisations in the conservation and management of these stocks;
- taking into consideration the interests of developing coastal and island countries, and especially those highly dependent on fisheries; and
- defining co-ordination mechanisms for the management of straddling and highly migratory fish species in enclosed and semi-enclosed seas.

While the Agreement serves as a useful framework to guide the management of species such as tuna and associated species, there is an urgent need to enforce its implementation. Implementation could be strengthened by enhancing the role of Regional Fisheries management Organizations and arrangements (RFOs), by establishing a legislative framework for their action. One proposal would be to give RFOs a mandate to consult with WTO on fisheries-related matters as a precursor to fisheries-related trade measures in the region of the RFO. A possible mechanism would be to have RFOs set catch limits for various species, and set up accurate obligatory reporting mechanisms, which would be backed up by market data at major landing sites. The RFOs would then be mandated to report defaulters to the WTO which would then impose agreed sanctions, depending on nature and extent of default.

## 7 POLICY OPTIONS

Given the mounting international concern about the sustainability of high seas fishing and the legitimate desire of developing coastal and island states to maximise their resource rents from their fisheries, there is an urgent need to review the policies that guide the exploitation of EEZ fisheries. This section looks at the three different scenarios, their impacts, and the options they would present to developing coastal and island states and DWFNs. The three different

scenarios are: (i) the disciplining of fisheries access fees by the WTO; (ii) the phasing-out of fisheries access agreements; and (iii) the pursuit of policies by developing coastal and island countries to 'fish their own fish'. Finally, since fisheries access agreements look like they are here to stay, at least for the medium term, the section evaluates policies for improving the terms of the agreements, to better address developing country needs and stock sustainability issues.

### 7.1 What if the WTO disciplines fisheries access fees?

The negotiations on fisheries subsidies in the Doha Round are taking place in the WTO Negotiating Group on Rules. With the reform of the EU Common Fisheries Policy in 2002-2003 and the recognition by Japan that certain subsidies can contribute to overcapacity, opposition to the negotiations has diminished significantly. The mandate set out in the Doha Ministerial Declaration in 2001 aims to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries under Paragraph 28 of the Doha Ministerial Declaration (DMD).

It is clear that there has been a sea change in the treatment of this area in the WTO. The debate has shifted from the issue of whether there is a need for disciplines specific to the fisheries sector to the issue of the nature and extent of such disciplines. While the status of fisheries access fees has yet to be determined, this category of potential subsidies raises difficult, yet important issues, particularly for developing coastal and island countries.

In their submission, the small vulnerable coastal states have taken up the issue of subsidies to artisanal fishing and access fee payments, with the request that these subsidies be excluded from any disciplines under the special and differential (S&D) treatment provisions for developing countries. In general, many developing countries oppose the prohibition of fisheries access fee payments, given the financial contribution these payments make to their economies.

As the negotiations on fisheries subsidies unfold at the WTO, three scenarios can be foreseen with respect to the consideration of possible disciplining of fisheries access payments:

*Scenario 1: The WTO bans all government-to-government fisheries access payments.*

If this happens, the following impacts are expected:

In the short term:

- There could be increased re-flagging of DWF fleets to the flags of host nations, which could have the undesirable outcome of increasing recourse to flags of convenience and IUU fishing;
- There could be an increase in private agreements. As it is unlikely that private parties can match the current amounts paid by DWFNs, developing countries granting access could suffer a significant loss of fishing access revenue. This could have devastating impacts on fishery-dependent economies, such as in some Pacific Island States;
- Developing island and coastal states could have to spend heavily on MCS measures as the only means of collecting access fees from operators in their waters. Given the heavy costs associated with MCS, it is probable that nearly all revenue collected from the DWF fleet(s) would go into MCS activities.



In the long term, however, it is anticipated that most small DWF fleets would opt out of distant water fishing. If the governments involved decide to allocate licenses abandoned by smaller DWF fleets to domestic fishers only, this would lead to an increase in the size of the domestic fleet to bridge the resulting gaps in fish supply. The MCS systems would be self-sustaining, given that they would mainly rely on domestic funds.

*Scenario 2: The WTO allows the government-to-government trade, but demands a full pay-back from the DWF fleet.*

From a financial point of view, this may appear to be equivalent to Scenario 1. However, it may be more acceptable to DWFNs because they would still use the lump-sum payments to consolidate their fleet interests in distant waters, while providing their individual operators a graduated flexible repayment mechanism, whereby the enterprises would reimburse access fees in graduated amounts as they earn money from the catches made. The critical consideration here is whether their fleets would continue to undertake distant water fishing, considering that they have to pay access fees. It is highly probable that they would continue to fish, considering the significant and steadily increasing global demand for fish. However, there would be inevitable economic readjustments among DWF fleets, which could see the less competitive fleets opting out of distant water fishing and an increase in private agreements.

*Scenario 3: The WTO does not discipline fisheries access subsidies.*

This scenario would mean that the *status quo* would continue. It would certainly be important for developing countries for the WTO to make a statement on trade in fishing access by insisting that fisheries access agreements should be based on established principles of trade (a price for a defined amount of a good or service). This would level the playing field among competing DWFNs by discouraging the use of tied aid as an excuse for low access payments. As a result, the resource rent captured by coastal developing countries would be expected to be higher than current levels. If the WTO fails to discipline fishing access subsidies, the current unfair trade will continue. Furthermore, if the subsidies, which provide DWF fleets with an unfair competitive advantage, are not addressed by the WTO, then the developing host countries may never be able to fish their own EEZs. Over-exploitation will continue and stocks will most certainly collapse in many coastal areas.

The WTO is the best-suited multilateral body to discipline fisheries access subsidies; a rules-oriented multilateral system is the best way in which to ensure competition in fish trade. Even though the sustainability of fish stocks is an environmental issue, and outside WTO competence, there are trade-distorting effects of fisheries subsidies. Thus, agreement could be reached in the WTO to discipline the use of subsidies related to access fees, with expert advice from international organisations such as the FAO and UNEP. The latter two institutions could be the fora, where 'WTO-actionable stock exploitation levels' are determined.

## 7.2 What if fisheries access agreements are phased out?

Fisheries access agreements, while likely to continue at least for the medium term, could become less common in the future, if:

- DWFNs decide to phase out their fishing access agreements, following a ban by the WTO on government-to-government fisheries access agreements; or,
- Developing coastal and island states decide to opt out of fisheries access agreements,

as their capacities to fish their own EEZs increases.

With respect to the first possibility, it is worth noting that several countries, such as Japan, are already encouraging their private DWF fleets, which relied on foreign EEZs, to scale down their operations. The net effect has been a significant decommissioning of large ocean fishing and factory vessels. These enterprises are now increasingly seeking to buy fish from

the coastal and island countries instead of doing the fishing themselves. Were the EU, US, Japan and other Far East countries to cease fishing operations in the EEZs of other coastal and island states, there would be a significant impact on trade in fish and fishery products worldwide.

In terms of the second possibility, a trend is also emerging in this direction. Several countries are not renewing fishing access agreements once existing ones expire. Countries such as New Zealand and South Africa have stopped signing fishing access agreements, and others such as Morocco are now not in favour of signing agreements on specific species such as cephalopods, because their domestic fleets can actually harvest current MSYs in their EEZs. It is envisaged that this trend may continue for some time, with several countries opting out of at least some forms of fishing agreements.

In either case, the impacts would be felt by both parties. In general, the impacts on developing coastal and island states will be negative, except for those countries whose fisheries sectors are well developed and whose domestic fishers can efficiently exploit their own EEZs. The impacts on DWFNs will depend on the nature of their fishing industries and their domestic markets for fish and fish products. To prepare for the possible phasing-out of fisheries agreements, each developing coastal or island state will need to develop a coherent strategy for assessing the specific impacts expected and developing their own domestic fishing capacity.

The consequences of discontinuing government-to-government fisheries access agreements would be in the following areas.

### *Impacts on Employment and Value Addition*

In developing coastal and island countries, fisheries access agreements account for about 25,000 direct jobs and a similar number of indirect jobs in support services (FIAS, 2000; IFREMER, 1999). Even though these jobs are much fewer and less well paid than the corresponding ones created in the DWFNs, they

are still important to many countries, especially in regions such as the Pacific Islands where there high unemployment and few employment alternatives. In other countries, with economic growth potential in other sectors, these jobs may become a drain on the country's capacity to develop other domestic sectors and hence not necessarily contribute to economic growth.

In several countries such as Argentina, Chile and the Solomon Islands, joint venture activities exist between DWF and host companies or countries in activities such as fishing and fish processing. Cessation of agreements may grossly affect the operations of these ventures. In several countries with fisheries access agreements, value-added activities such as port services, supplies and recreational activities for the DWF crew account for more revenue than that from direct access fees payments. Investments already made for these activities would be at risk if access agreements were to be stopped today.

Similar impacts would be felt in DWFNs. EU fisheries access agreements support more than 20,000 jobs for EU nationals, including both direct and indirect value-added activities. Cessation of fisheries agreements would mean the loss of these jobs and might have significant political implications, especially in countries such as Spain with regions which are heavily dependent on fisheries agreements for their economic activities. Several ports and shipyards would have diminished activities and some factories, such as canneries, may be forced to close, unless they made alternative supply arrangements.

Loss of these jobs would necessitate compensatory payments in line with the countries' specific social security rules. It has been estimated (IFREMER, 1999) that cessation of fisheries agreements in the EU would necessitate compensatory payments and other costs amounting to about EUR1.76 billion, spread over a ten-year period, because of periodic retirement benefit payments. Interestingly, over the same period it would cost the EU about EUR1.55 billion in payments to host countries for fisheries access agreements. It is therefore

apparent that the financial consequences of deciding to stop or continue agreements are of similar magnitudes, but vastly different political impacts. Similar assessments have not been undertaken for Japan, Korea, China and the US agreements, but given similarities in operations and some similar social security benefits, it can be assumed that the impacts would be similar to those for the EU.

### *Impacts on Supply of Fish and Fishery Products in DWFNs*

An estimated two million MT of tuna supplies to the world market is harvested through fisheries agreements. Countries such as Japan, which consume huge volumes of this fish annually, depend heavily on their DWF fleets to land high quality *sashimi* grade Yellowfin, Bluefin and Bigeye tuna for their domestic markets. Consumers in these markets also rely on the domestic crews in the DWF fleet to handle and preserve fishery products in ways that meet their cultural needs. Canneries in Spain, Italy, Thailand and Japan also depend heavily on fish caught by DWF fleets for their supply.

Some fish, such as cod, halibut, redfish and hake, for which there is a high demand in the EU, are almost entirely harvested via fisheries access agreements; these fish have no close substitutes. Likewise, there are no substitutes for cephalopods and several other fishery products that are almost entirely supplied through fishing activities of DWF fleets.

The net effect of stopping fisheries access agreements could be an abrupt increase in imports to meet the demand in DWFNs. This would have an impact on trade deficits, with some developing coastal and island countries even attaining a surplus with the DWFNs. As a result, these developed countries may decide to impose tariffs on fish imports, or refuse to cut tariffs on some of the commodities developing countries have been urging developed countries to act on.

If DWFNs decided to suddenly stop fisheries access agreements, there would be an inevitable delay before coastal and island states acquired

sufficient capacity to harvest their own fish. This in turn would lead to at least a temporary decrease in supply of some fishery products, and probable price increases for these commodities, depending on the relative importance of fish supplies from access agreements in any given country. In some DWFNs, such as the EU, fish from access agreements constitutes only about nine percent of the total world supply to that market and, therefore, overall prices may not be affected so much (IFREMER, 1999).

### *Impacts on DWF Fleets*

In 1997, the total EU fleet in both Northern and Southern agreement waters was about 2,850 vessels (IFREMER, 1999). The number of Far East Asian and US vessels in other distant waters is estimated to be of the same magnitude. Overall, close to 5,000 small and large vessels would be at risk of being decommissioned if access agreements were to be discontinued. The options for fleets, which would be open to most DWFNs, would be:

- *Scrapping all vessels older than 30 years and redeploying all remaining vessels to home waters.* This measure would see about 70 percent of the entire EU DWF scrapped. The option to redeploy may not be feasible to most DWFNs, such as EU and Japan, who already have excess capacities in their waters.
- *Transferring vessels younger than 30 years to other countries under joint ventures* This could stimulate local capacity, while relieving DWFNs of excess capacity.
- *Halting production of new fishing vessels in most shipyards in the DWFNs and decommissioning specialised fishing vessels whose target species is only found in distant waters.* This would result in massive job losses in countries such as Spain (where ports such as Vigo, Las Palmas may be forced to close).
- *Continuing some fishing by DWF fleets through private agreements with distant coastal and island states and in the open seas.* Private agreements would represent a lose-lose position because they would

be more expensive for the private fishing companies and certainly less lucrative for the coastal and island states in terms of both direct payments and development assistance. They would also be harder to manage and co-ordinate, even within one EEZ. Under the UN Agreement on Straddling Stocks and Highly Migratory Species, international waters are subject to agreements by RFOs, whose members come from immediate coastal and island states. This means that the DWF fleets would still need some form of understanding (at a cost) with these organisations to continue their fishing operations.

### *Resource Sustainability*

It is often assumed that a cessation of fisheries agreements would result in the recovery of stocks in most coastal and island countries waters as a result of decreased fishing effort. This might be true, but only if these countries maintained effective MCS measures to deter IUU fishing.

Given that such measures cost money and that there would be diminished revenue from fishery activities through access fee payments, these countries would find it difficult to implement such a policy.

For example, the reduction of the EU fleet in Moroccan waters was not met by a corresponding decrease in fishing effort. Catch levels reported by the domestic fleet actually increased at the outset, before significantly decreasing as stocks became depleted. This was apparently a result of increases in domestic fishing capacity while the agreements were still in place, and a sudden response by domestic investors to opportunities created by the exit of foreign fleets after the agreements ended. Local measures are now being implemented and stocks are expected to recover. This experience illustrates that, especially in fisheries that can be easily exploited by artisanal and semi-industrial fleets, the withdrawal of DWF fleets does not necessarily translate into a decrease in fishing effort.

## **7.3 What if developing countries pursue policies to ‘fish their own fish’?**

In the long run, countries should aspire to develop sufficient capacity to be able to exploit their own fisheries resources. As well as generating considerable economic benefits, fishing also creates many socio-economic benefits for local fishing communities, which are best realised when the fishers are domestic rather than foreign. For some countries, with small populations, low GDPs and limited labour resources, this strategy will be unfeasible. However, for a large number of coastal countries, the impediment to developing their fishing capacity is not shortage of labour, but, rather, a lack of appropriate technology and resources. Domestication of fishing activities could be achieved by:

- Giving tax concessions to domestically-based foreign fishing companies or those with joint ventures;
- Zoning regions for exploitation by domestically-based fishing fleet; and
- Requiring a certain number of licenses to be under joint ventures.

Developing coastal and island countries and DWFNs need to negotiate fisheries access agreements that are aimed at facilitating the domestication of EEZ fishing, as well as sustainable fishing. However, there are obvious inherent difficulties with such an approach. The main problem is that the DWF fleet may consider any development of the local fleet as a threat to their business and, consequently, put pressure on its home country to mitigate efforts to assist in building local capacity. Nevertheless, as witnessed by the new generation of EU Fisheries Partnership Agreements, fisheries access needs to be considered as a ‘give-and-take’, with rights as well as obligations for the DWFN both with respect to the development of the host country and the sustainable management of its EEZ fisheries. Generally, most new fisheries access agreements are moving towards building more fishing capacity in the host state. The crucial aspect - which has yet to be adequately addressed - is whether fisheries access agreements should be gradually replaced by domestic fishing capacity, as a matter of principle and an

explicit policy. Proponents of this policy cite the many linkages between domestic fishing and the way of life in local communities given the many socio-economic spin-offs from the domestic fishing trade. Opponents of this policy prefer to consider fishing as a trade, whose primary objective should be to earn maximum returns for the developing coastal country and, therefore, to encourage whoever can do this most efficiently.

Such a policy to domesticate fishing would be difficult to achieve unilaterally, especially where the target stock is straddling or migratory. This task is made more difficult

by the tied-aid nature of most fisheries access agreements and the stated aim of most DWFNs to protect their fishing interests in several oceans as well as to supply their domestic processing industry with raw fish, as in the case of the EU. In the interests of development, especially in the context of the UN Millennium Development Goals to eradicate poverty, it is of the utmost urgency that the international community works together to enable developing coastal and island countries to 'fish their own fish'. As the old adage goes, 'it is better to teach a man to fish' as this is more sustainable than to encourage others to do the fishing for him.

## 7.4 Reforming fisheries access agreements

Considering the existing trade linkages between coastal and island states, on the one hand, and DWFNs on the other, and the negative consequences of IUU fishing, the logical option for many of these developing countries is to negotiate access agreements. Given the current imbalance in these agreements, generally in favour of the DWFNs, there is a need to reform them to maximise the benefits to the developing coastal and island states involved, and to address stock sustainability issues. Some of the policy options to achieve these objectives are discussed below. For a more detailed set of possible elements of a 'reformed fisheries access agreement', see Annex 3.

### *Policies to Maximise Rent Capture*

Any policy aimed at maximising rent capture must recognise that DWF fleets are in fishing as a business and will not invest in an EEZ where they do not make profits. At the same time, the DWF fleets need to recognise that coastal and island countries are entitled to a fair rent payment for their natural resources. Given that the levels of investment required in fishing are relatively low, it would be difficult to convince countries granting access that current levels (such as six percent of the turnover value) represent fair compensation.

Access payments should be strictly calculated as a business relationship and the amount

of compensation agreed upon before other aspects are considered, such as development aid or support for MCS and research. The difficulty in determining the basis for resource rent calculations resides in the lack of MSY and TAC data. It is important to consider both historical catch data and efficient reporting of actual catches. Payments, although they may still consist of an initial fixed amount and a graduated payment scheme, will need to be increasingly based on actual catch wherever possible.

### *Policies to Maximise Value-Added Activities*

The economies of countries granting access obtain more from value-added activities - both direct and indirect - than from the actual access payments. It is therefore necessary to develop policies that encourage DWF fleets to undertake most of their value-added activities in the host countries. This could be achieved by:

- *Encouraging landings, by either banning or taxing transshipment at sea and improving port facilities and services.* Some of these aspects are enshrined as rights of the coastal and island states by UNCLOS. This policy may be easy to implement in countries with long coastlines, or isolated islands because sailing to other ports in other countries for transshipment may



be uneconomical. In countries such as the Pacific Island countries with closely intertwined EEZs, a regional agreement on obligatory ports to call may be more logical from an economic point of view.

- *Encouraging domestic processing.* This could be achieved by taxing raw material exports and giving tax concessions to locally-based fish processing factories, regardless of the nationality of their ownership.
- *Encouraging use of domestic services and facilities by DWF fleets.* This could be achieved by giving tax concessions to goods bought by DWF fleets locally and establishing a differential tax aimed at giving incentives to those who buy most of their supplies and services from domestic sources.

### *Policies to Capture Labour Benefits*

Employment creation through fisheries access agreements is an important political and socio-economic objective for most coastal and island countries. It represents the most visible benefit to coastal communities and helps lessen conflict between local and DWF fleets. Policies aimed at maximising employment benefits may include:

- *Definition of the quality and numbers of jobs that a fisheries agreement should generate.* The practice of paying the salaries without actually taking the local crew on board should be discouraged, as it is no different from increasing direct access fees. Not hiring local crew because of cultural diversity issues should be discouraged, as it hinders the necessary business relationship between coastal and DWF fleet communities and can contribute to conflicts between the two communities.
- *Policies aimed at training local crew and staff in fishing and related activities.* Fisheries agreements should include budgets to train local crew and staff in fisheries-related activities, such as boat repair, net repair and fish processing.

### *Policies to Maintain Stock Sustainability*

Whether fisheries access agreements will continue to be significant contributors to the economies of those countries granting access will greatly depend on the sustainability of target stocks. If fished sustainably, many waters have shown remarkable capacity for stock replenishment. In order to ensure sustainable harvesting, it is essential that appropriate mechanisms are in place and enforced to combat opportunistic fishing activities, such as IUU fishing, inaccurate reporting of catch areas and under-reporting of catch. Shared stocks should be regionally managed to avoid the tendency of over-licensing by neighbouring coastal states. Policies to address these issues could include:

- *Enhanced regional collaboration on straddling and migratory stocks* through strengthened Regional Fisheries Management Organisations and arrangements (RFOs), the membership of which could be made more inclusive by not requiring membership fees as a precondition to participating in important decision making forums.
- *Equality of access conditions for all fishing activities in any given water.* Currently, differentiated conditions of access are the norm in all the major oceans, due to the different terms set in the various fishing agreements. While countries in a given region may have in place well-defined agreements with certain DWFNs, such as the US or the EU, agreements with Far East fleets may lack clarity and transparency. Lack of transparency and differentiated access conditions complicates the situation for all parties involved. The DWFN does not know who else has been licensed to access the resource and under what conditions, while the host country does not have a coherent access policy and is not able to accurately forecast expected revenues.
- *Implementation and enforcement of fisheries management plans* within the framework of fisheries agreements, including considerations of fishing under strict quotas within the limits of MSY of the targeted fisheries.



## 8 KNOWLEDGE GAPS AND AREAS FOR FURTHER RESEARCH

This study has attempted to flesh out some of the main aspects of fisheries access agreements. In order to have a fuller understanding of these issues, comprehensive research and studies are needed in the following areas:

- Detailed country-by-country analytical studies on the linkages between the domestic fishery and fisheries access payments, including primary data from both government (budgeting process) and the fisheries private sector (any subsidies extended as a result of access payments). A country-level cost-benefit analysis of these agreements is also necessary.
- Detailed case-by-case evaluations of public and private fisheries access agreements concluded by the US, Japan and other major DWFNs, similar to the evaluation done for the EU agreements in 1999 and under the review of the EU Common Fisheries Policy.
- Stock assessment of all fishery species targeted by DWF fleets. This assessment, which may take five to ten years to complete, should include by-catch reporting and utilisation data. This study will be crucial in determining accurately the status of stocks in the worlds EEZs.
- Development of practical mechanisms for enforcement of international conventions on the conservation of EEZs and open waters fishery stocks. This could involve giving legislative and arbitration mandates to regional fisheries organizations and other competent international organisations. Failure to develop practical mechanisms may lead to the collapse of stocks, given current trends.
- A detailed study of all fisheries-related subsidies building on those already undertaken in various international fora, including by UNEP, OECD, WWF. A parallel study on country-by-country industrial and artisanal fisheries subsidies also needs to be carried out. This will help in developing an holistic approach to the subsidies issue and devising ways to mitigate their trade-distorting effects, as well as their effects on stock sustainability.

## ENDNOTES

- 1 There is currently a need for clarification from the European Commission with regard to the Economic Partnership Agreements (EPAs) being negotiated with the ACP countries. Whereas DG Trade and DG Development consider Fisheries Partnership Agreements (FPAs) as part of the EPA process, DG Fisheries has been negotiating and signing Fisheries Agreements as before, although under terms said to be revised sufficiently to make them 'Partnership' agreements. The most recent examples of such agreements are those signed with Comoros and Gabon in December 2005. EPAs are multilateral (between the EU and several Regional Economic Blocks in the ACP), while the fisheries agreements currently being signed are bilateral, as they always have been. If indeed EPAs are all-encompassing, including fisheries as one of their chapters, current fisheries agreements would need to be revised once the EPA process is completed (by December 2007) to remove any inconsistencies.
- 2 EU, 2002.
- 3 A purse seiner is an industrial fishing vessel which uses a long fishnet, with floats at the top and weights at the bottom, hauled by its ends to close at a body of fish.
- 4 An upwelling region is an area of a waterbody where the water currents continuously move upwards towards the surface. This is usually caused by a convergence of water currents, often as a result of wind patterns which are in turn affected by temperature patterns.
- 5 EU subsidies for construction and modernisation were terminated at the end of 2004.
- 6 OWTThe EU is in the process of concluding a fisheries access agreement with Tanzania.

## ANNEXES

### **Annex 1: List of Institutions/Persons Interviewed**

1. Caribbean Community (CARIFORM) Secretariat
2. Common Market of Eastern and Southern Africa (COMESA) Secretariat: Mr Mark Pearson
3. Commonwealth Secretariat: Dr Roman Grynberg
4. Eastern and Southern Africa (ESA)-EU Fisheries Cluster on Fisheries Economic Partnership Agreements (EPA): Ambassador Andebraham Wegeorgiordis
5. Eritrea, Ministry of Fisheries: Mr Sein Mohamedbar
6. Forum Fisheries Agency (FFA) Secretariat: Mr Len Rodwell
7. Indian Ocean Commission (IOC): Mr Raj Mohabeer
8. Indian Ocean Tuna Commission (IOTC) : Mr David Ardill
9. Kenya, Department of Fisheries: Mrs N. Gitonga - Director
10. Kenyan Fish Processors and Exporters Association: Mr M. Tung and Captain M. Esposito
11. Seychelles Fisheries Authority.
12. South African Development Community (SADC) Secretariat: Mrs Sandy Davies

## Annex 2: An Overview of EU Agreements with Developing Countries

Country	Period <sup>1</sup>	Fishing opportunities	Total Community Financial Contribution <sup>2</sup> (EUR)	% for actions to promote conservation of resources and sustainable development (targeted actions)
Angola	No protocol in force			
Cape-Verde	01/07/2004-30/06/2005	630 gross registered tonnes for bottom longliners and 37 seiners, 62 surface longliners and 18 pole-and-line tuna vessels	EUR 680 000/year	<u>41%</u>
Comor	01/01/2005-31/12/2010	40 seiners 17 surface longliners	EUR 390 000	<u>60%</u>
Côte d'Ivoire	01/07/2004-30/06/2007	1 300 gross registered tonnes for demersal species and 34 seiners, 11 surface longliners and 3 pole-and-line vessels for tuna fishing	EUR 3 195 000 (EUR 1 065 000/year)	<u>100%</u>
Gabon	03/12/2001-02/12/2005	Trawlers: 1 200 grt/month, averaged yearly 38 tuna seiners 26 surface longliners	EUR 5 050 000 (EUR 1 262 500/year)	<u>70%</u>
Gambia	No protocol in force			
Greenland	01/01/2001-31/12/2006	Redfish: 25 500 t Shrimp: 9 675 t Capelin: 7.7 % of the capelin TAC for the season Greenland halibut: 10 500 t Roundnose grenadier:3 350 t Atlantic Halibut: 1 200 t Snowcrab: 1 000 t By-catches: 2 000 t (refers to the combined by-catch of cod, catfish, skate, ling and tusk)	EUR 256 920 000 (EUR 42 820 000/year)	26%
Guinea	01/01/2004-31/12/2008	2 500 grt/month for fish and cephalopods 1 500 grt/month for shrimps Tuna 34 seiners 14 pole-and-line vessels 9 surface longliners	EUR 17 000 000 (EUR 3 400 000/year) This amount may gradually be increased to EUR 19 975 000 (EUR 3 995 000/year) depending on increases in fishing possibilities. See the <u>protocol</u> for further information.	<u>41% in the first year with the possibility of a gradual increase to 44% in the last year.</u>
Guinea-Bissau	16/06/2001-15/06/2004	Shrimps: 9 600 grt Fish/Cephal: 2 800 grt Tuna Seiners: 40 Pole-and-line/Longliners: 36	EUR 51 000 000 (EUR 10 000 000/year the first three years and EUR 10 500 000 the last two years)	<u>6,7%</u>
16/06/2001-15/06/2006	protocol changed for the period 16/06/04-15/06/06	Shrimps: 4 400 grt Fish/Cephal: 4 400 grt Tuna Seiners: 40 Pole-and-line/Longliners: 30	EUR 44 520 000 (EUR 10 000 000/year the first three years and EUR 7 260 000 the last two years)	
Equatorial Guinea	No protocol in force			
Kiribati	16/09/2003-15/09/2006	1st year Seiners: 6 Surface longliners: 12  Following years Seiners: 4 Surface longliners: 12	EUR 1 378 000 (EUR 546 000 for the first year and EUR 416 000 a year for the following years)	<u>18% for the first year and 24% for the following years</u>
Madagascar	01/01/2004-31/12/2006	40 seiners 40 surface longliners	EUR 2 475 000 (EUR 825 000/year)	<u>61%</u>

<b>Mauritius</b>	03/12/2003- 02/12/2007	41 seiners and 49 surface longliners. Line fishing is set at 25 grt/month, averaged yearly	EUR 1 950 000 (EUR 487 500/year)	<u>40%</u>
<b>Mauritania</b>	01/08/2001- 31/07/2006	Demersal species and crawfish: 22 000 grt Cephalopods: 55 vessels Pelagic species: 15 vessels  Tuna fishing Seiners: 36 vessels Surface longliners and pool-and-line: 31 vessels	EUR 430 000 000 (EUR 86 000 000/year)	<u>5%</u>
<b>Mozambique</b>	01/01/2004- 31/12/2006	High-sea shrimps: A maximum of 10 vessels will be authorised to fish for high-sea shrimps within the limit of 1 000 tonnes a year  Tuna: 35 freezer seiners and 14 surface longliners	EUR 12 270 000 (EUR 4 090 000/year)	<u>100%</u>
<b>São Tomé and Príncipe</b>	01/06/2002- 31/05/2005	Tuna : 38 seiners 25 surface longliners 2 pole-and-line vessels  3 vessels for experimental fishing	EUR 2 200 000 (EUR 925 000 for the first year and EUR 637 500 for the second and third years)	<u>40%</u>
<b>Senegal</b>	01/07/2002 30/06/2006	Coastal demersal fishing: 1 500 grt Deep-water demersal fish trawlers and bottom longliners: 3 000 grt Deep-water demersal freezer trawlers fishing for crustaceans: 3 500 grt  Tuna fishing Seiners: 39 vessels Pole-and-line: 16 vessels Longliners: 23 vessels	EUR 64 000 000 (EUR 16 000 000/year)	<u>18,75%</u>
<b>Seychelles</b>	18/01/2005- 17/01/2011	Seiners: 40 Surface longliners: 12	EUR 24 750 000 (EUR 4 125 000/year)	<u>36%</u>
<b>Solomon Islands</b>	01/01/2005- 31/12/2007	Purse seiners: 40 Longliners: 10	EUR 1 200 000 (EUR 400 000/year)	

Country	Period	Fishing opportunities
<b>Faeroe Islands</b>	02/02/2006- 01/02/2012	Whitefish (cod, haddock, saithe, redfish, ling, blue ling and flatfish): 10 575 t Blue whiting and mackerel: 18 908 t
<b>Iceland</b>	15/12/2003- 14/12/2009	Redfish: 3 000 t
<b>Norway</b>	2003- 2009	Arrangement for 2006 - EC quotas  Cod: 19 260 t Haddock: 44 835 t Saithe: 59 160 t Whiting: 21 420 t Plaice: 55 820 t Mackerel: 16 954 t Herring: 322 873 t

Source: [http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/factsheets/facts/en/pcp4\\_2.htm](http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/facts/en/pcp4_2.htm)

### **Annex 3: Suggested Aspects for Inclusion in Negotiating a Fisheries Access Agreement**

The elements listed below are given as suggestions for use in the preparation and negotiation phase of a fisheries access agreement. These suggestions are based on Grynberg (2003), an analysis made in the context of efforts to help ACP countries formulate their positions in negotiations with the EU.

#### *Basic Principles*

1. Fisheries access agreements should be preceded by consultations with key stakeholders in the public and private sector at the national level (for non-migratory stocks), or at the regional level (for straddling and migratory stocks). During these consultations, the interests of the various stakeholders that could be adversely affected by a fisheries agreement with a DWFN, should be evaluated, including detailed analytical study. The parties should also recognise the logical business motivations of the DWF fleet to access the countries excess stocks and consider both sides as trading partners, not antagonists.
2. The terms and conditions negotiated in the fisheries access agreement should support the development and strengthening of regional integration, preservation of any existing trade preferences (such as the Cotonou acquis for African, Caribbean and Pacific countries) and provision of special and differential treatment. These guiding principles should contribute to sustainable and responsible development of the living marine resources and to optimising the benefits of this sector for present and future generations, through increased investment, capacity-building and improved market access.
3. The DWFN should be able to uphold the same stock conservation and responsible fishing practises employed by its fishing fleet in home waters. In particular, the agreement should make reference to the implementation of 'home country or region' conservation management and sustainable fishing practises, such as contained in the EU Common Fisheries Policy, or the International Convention for the Conservation of Atlantic Tunas (ICCAT).
4. Parties to the negotiations should consider an agreement based on:
  - flexible adjustment of fishing possibilities according to resource assessments that take into account the best available scientific information and the needs of the local fishing industry;
  - special provision for small-scale and subsistence fishing (in particular by strict observance of protected zones); and
  - functioning monitoring systems of the environmental, economic and social impacts in partner countries.
5. The overarching objective of the agreement should be to promote effective conservation and management, an essential prerequisite for sustainable management of the marine resource in the EEZ and territorial waters of the coastal and island states granting access, for the mutual social and economic benefit of both parties.
6. It should be ensured that decisions pertaining to the management and use of the living marine resources in the EEZ and territorial waters, including granting access to DWF vessels to the relevant jurisdiction of the host country, remain the sovereign right of the host country and are undertaken in accordance with UNCLOS and the UN Agreement on Straddling Stocks and Highly Migratory Species.



7. In determining levels of sustainable catch, fishing capacity and other management strategies, the precautionary principle should be applied, in accordance with the FAO Code of Conduct for Responsible Fishing. This would help avoid or reverse problems such as overcapacity and over-fishing, as well as negative impacts on the ecosystems and artisanal fishers.
8. The agreement should maintain the integrity of the host country's EEZ and recognise the sovereign right and associated obligations of the host country to exercise its rights to explore, exploit, conserve and manage the living marine resource within its EEZ.
9. The agreements should be consistent with existing national laws, as well as regional and sub-regional agreements.
10. The agreement should be to the benefit of the fisheries industry as a whole, in the host country.
11. To the extent that the agreement contains trade-related provisions, they should be compatible with WTO rules.
12. The duration of an agreement should not be less than three years. Periods shorter than this are considered insufficient to enable prudent business planning; longer periods may tie either or both parties to unfavourable conditions, considering the dynamic nature of the fisheries sector.
13. A joint committee should be established between the DWFN and the host state, involving the private and public sectors, to meet at the request of either party, and to act as the first recourse in dispute settlement.

### *Fisheries Management and Conservation Issues*

1. Coastal and island states granting fisheries access should have restricted fishing zones in order to protect their national, artisanal and coastal fisheries from foreign industrial vessels. This should be a non-negotiable condition.
2. In order to further protect its territorial waters and ensure sustainability of the artisanal and coastal fishery, each host state should ensure its right to impose a range of measures, including seasonal and gear restrictions.
3. The restricted zones and the necessary measures employed by the host country will vary depending on the specificity of that country.
4. Coastal and island countries with access to migratory species, such as tuna and tuna-like species, should be members of regional fisheries organisations, such as the Forum Fisheries Agency (FFA) and the Indian Ocean Tuna Commission (IOTC). The coastal and island states and the DWFNs should co-ordinate action to ensure the management and conservation of these resources and facilitate relevant scientific research.
5. There is a need for substantive obligations, which should be enforceable through dispute settlement mechanisms, including the following:
  - Where there is insufficient scientific evidence for the competent national management authority to determine limits and target levels of sustainable catch in a host country EEZ, the DWFN, in consultation with the competent national authority and RFO, should make sufficient resources available to undertake this scientific analysis.

- Neither the DWFN nor the coastal or island country should grant access to the DWFN or other vessels, or commence joint ventures, where such an increase in effort results in catch levels above the target sustainable level established by the competent national authority.
- Prior to the commencement of renegotiation of a fisheries access agreement, the DWFN, in conjunction with the competent national authority, should prepare a joint impact assessment of any current access arrangement.
- The allowable catch should be determined with due cognisance of the wide year-to-year fluctuations in the biomass and availability of living marine resources.
- Where access is granted to DWF vessels, the coastal or island country should, in each year of the agreement, review the maximum number of vessels, gear type, catch level, and by-catch and notify the DWFN regarding any proposed changes at least ninety days prior to the expiry of the agreement. Where a multi-year bilateral agreement has been established between a DWFN and a host state, the host state, following consultation, should reserve the right to decrease access for purposes of sustainability.
- In order to conserve and manage straddling stocks and highly migratory fish species, the DWFN and the host coastal and island states should ensure compliance by vessels flying their flags with relevant national, regional and sub- regional fisheries management measures and related national laws and regulations.

### *Financial and Trade Measures*

1. The host state should ensure that any existing preferential market access agreement should be maintained and that there should be no further erosion of trade preferences concerning value-added products, such as canned tuna, tuna loins, other tuna products and other fish species. The undertaking should be over a defined period (preferably ten years), during which financial and other compensation should be provided to improve the competitiveness and production capacity of the processing factories, the diversification of the fishing industry and improvement of port facilities.
2. The DWFN should work with the host state to encourage the establishment of joint ventures in fishing operations.
3. The DWFN should establish a development fund to promote the setting up of joint ventures in fishing operations, fish processing, port services, enhance production capacity, improve competitiveness of fishing and related industries and services, downstream processing, development and improvement of port facilities and diversification of the fishery to include target species which are under-exploited or not exploited.
4. After a successful negotiation of a bilateral or multilateral fisheries access agreement, the two parties could also negotiate a separate sectoral development or fiscal agreement, at the national and/or regional level.
5. The DWFN should undertake to eliminate non-tariff barriers, including the use of unjustifiable SPS measures. There should be no change in SPS and environmental regulations unless there is a proven scientifically valid reason to do so, supported by a valid risk assessment. If a change is justified and approved, the host country should be given a reasonable period of time to adjust before the enforcement of the new regulations. Both parties should endeavour to sign an SPS protocol to define their rights and obligations.
6. Rules of origin, where they exist, should be reviewed to ensure that:
  - they do not penalise an exporter of the host state when that exporter seeks to add value by processing, such as tuna canning;

- they take full account of existing trade agreements (e.g. the EU-ACP Cotonou Agreement, which grants the right to request suspension of all origin rules for canned tuna and tuna loins within an annual quota derogation.);
- they provide incentives for foreign investment by offering an appropriate safe and market-driven environment and allow investing firms to qualify for preferential treatment in the DWFN market; and
- they are not inconsistent with the principles underlying the WTO Plurilateral Agreement on Government Procurement (to which most DWFNs are party) and vessel ownership rules. This means that not only should there be no discrimination against foreign products, but also no discrimination against foreign suppliers and, in particular, no discrimination against locally-established suppliers on the basis of their degree of foreign affiliation or ownership.

### *Vessel Management and Post-Harvest Arrangements*

**Coastal and island states and the DWFN should set out minimum terms and conditions with respect to monitoring, control and surveillance of the DWF vessels operating in the waters of host states, which should include the following:**

1. A compatible Vessel Monitoring System (VMS) should be a compulsory requirement for all coastal and island states sharing a fisheries resource. Host states which do not have a VMS should be assisted by the DWFN to set up a compatible VMS.
2. Coastal and island states, in conjunction with the DWFN, should develop other mechanisms to ensure effective Monitoring, Control and Surveillance (MCS). The DWFN should provide support for the host state to put this system in place and assist in implementation.
3. The DWFN should provide support for national and regional efforts to combat IUU fishing in general and eliminate flags of convenience in particular. Fishing vessels involved in IUU fishing should be prosecuted, with the assistance and full support of the DWFN and should not be allowed to fish again in the host waters, unless prior authorisation has been obtained from both the DWFN and the host state.
4. Countries should have the option of embarking observers on DWF fleets, with well-stipulated procedures on the deployment of such observers. Observers may be paid by the national governments but all costs on board are to be met by the ship-owner. The DWFN should establish a fund to pay for the costs of training observers and to contribute to the costs of observers' on-board costs.
5. A common system of reporting should be developed and used throughout the region, with minimum terms set for reporting.
6. DWF vessels should land or transship their catch in the nearest port of the host coastal or island state or agreed regional port, with no transshipment allowed at sea.
7. DWF vessels should endeavour to use the facilities of the countries with which they have an agreement and also to make use of local supplies.
8. By-catch reporting should be compulsory, but priority should be given to avoid discards through the use of selective fishing methods. Where feasible and practical, by-catch should be brought ashore.
9. The DWFN should provide national or regional training programmes for host coastal and island state nationals to facilitate their effective participation in the fishing industry. Where a

DWFN has completed bilateral access negotiations, employment of nationals in substantive posts on DWF vessels should be a condition and there should be a social clause stipulating minimum conditions of employment and training.

### *Development Issues*

**The DWFN should provide the following:**

1. Technical Assistance and other resources to ensure that the host coastal and island states have access to sufficient scientific evidence for the competent national management authorities to determine levels of sustainable catch.
2. Capacity development needed for the design and implementation of national and, where appropriate, regional management regimes. These regimes should be based on scientific evidence and enable the host state to address its fisheries needs through appropriate regional or national bodies. Such regimes should take account of national development objectives, including social and economic aspects.
3. Technical Assistance to work with both the fishing industry and the host state to continuously monitor rules of origin and non-tariff barriers to ensure that these measures do not unduly restrict trade.
4. Resources to ensure DWF vessels land or transship their catch in the port of a host state, with no transshipment taking place at sea.
5. Resources to ensure compulsory reporting of by-catch and implementing the rule that fish should, under no circumstances, be discarded at sea.
6. Resources to assist host states in the monitoring, control and surveillance of EEZs, including resources to allow the host state to take action against vessels found to be in violation of bilateral agreements and against companies giving false information.
7. Resources to ensure that the interests of the host state are presented and defended in the WTO and to enhance the participation of the host state in the negotiation of the Doha Development Agenda, particularly as it relates to international trade in fish and fishery products, including improved access to markets for fish and fishery products; fisheries subsidies; environmental labelling; the relationship between WTO trade rules and multilateral environmental agreements; and technical assistance and capacity building.
8. Resources to develop and implement a programme on SPS to provide:
  - a human resource and institutional capacity-building programme to ensure the development of adequate mechanisms to comply with SPS and food safety standards;
  - assistance to enable the host state to participate actively in the setting of internationally-agreed standards and norms;
  - programme to develop self-regulation for exporters;
  - harmonised testing and certification standards throughout the region (for migratory stocks), full transparency in tests used and adequate notification of new testing regulations;
  - a joint mechanism for co-ordination, consultation and exchange of information as regards notification and application of proposed SPS measures, whenever these measures might affect the interests of the host state; and
  - a comprehensive inventory of all SPS measures currently in force in the DWFN, including those already notified to the WTO.

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